

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS  
REGARDING EFFORTS OR ATTEMPTS TO STOP THE INVESTIGATION OR  
PROSECUTION OF TRUTH AND RECONCILIATION COMMISSION CASES  
(TRC CASES INQUIRY)**

**HELD AT:**

Sci-Bono Discovery Centre, Corner of Miriam Makeba & Helen Joseph Street  
Newtown, Johannesburg

**BEFORE:**

**COMMISSIONERS:**

The Honourable Ms Justice Sisi Khampepe (Judge Ret.) – Chairperson  
The Honourable Mr Justice Frans Diale Kgomo (Judge President Ret.)  
Adv Andrea Gabriel (SC)

**EVIDENCE LEADERS:**

Adv Ishmael Semanya (SC)  
Adv Vas Soni (SC)  
Adv Fana Nalane (SC)  
Adv Nompumelelo Seme  
Ms Baitseng Rangata

**REPRESENTATIVES**

Adv KD Moroka (SC) – DoJ representative  
Adv Tlotlego Tsagae (DoJ representative)  
Adv Gwala (SC) – NPA representative  
Adv Yanela Ntloko- NPA representative  
Adv Varney (SC) – The Calata Group  
Adv D Pillay – The Calata Group  
Mr Siphon Tlhaole – The Calata Group  
Ms A Thakor – The Calata Group  
Adv Motlalepule Rantho (for SAPS)  
Adv Ebenezer Propy (for SAPS)  
Adv Bridgette Nthambeleni (for Adv Jiba)  
Adv Irene de Vos for President Cyril Ramaphosa

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**DAY 37**

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PROCEEDINGS ON 24 APRIL 2026

CHAIRPERSON: Mr Varney?

ADV VARNEY: Chairperson, I am advised by the NPA that Mr Gwala who is online has one further question he would like to pose.

CHAIRPERSON: Mr Gwala.

ADV GWALA: Good morning, Chairperson and good morning, Commissioners. Thank you for accommodating me and thank you for the indulgence. I have one aspect to deal with. It will take about five minutes or less; if I may, Chairperson.

10 CHAIRPERSON: Yes, you may.

ANTON ROSSOUW ACKERMANN: still under oath

CROSS-EXAMINATION BY ADV GWALA (Continues): Thank you.

Mr Ackermann, good morning.

ADV ACKERMANN: Morning.

ADV GWALA: Can I ask you to take the NPA bundle? We did deal with it yesterday briefly; and please tell me when you found it.

ADV ACKERMANN: I found it.

ADV GWALA: Could you please turn to page 17 of that bundle? Please do tell me when you found the page.

20 ADV ACKERMANN: It appears to me that there is some difficulty finding it. I will be with you just now, asking Mr Venter.

ADV GWALA: But perhaps I can just read it out to save time.

ADV ACKERMANN: I have got it.

ADV GWALA: You have got it.

ADV ACKERMANN: I have got it.

ADV GWALA: Okay.

ADV ACKERMANN: Yes.

ADV GWALA: That is the memorandum dated 5 June 2008. You see that?

ADV ACKERMANN: That is correct.

ADV GWALA: And the subject is "TRC Task Team".

ADV ACKERMANN: That is correct.

ADV GWALA: It is from yourself to Dr Ramaite.

ADV ACKERMANN: That is correct.

10 ADV GWALA: Yes. I just want to take the first paragraph there. You say:

"Dear Dr Ramaite. With reference to the meeting between you, Adv Macadam and myself earlier this morning, I confirm the following:

1. That Adv Macadam will supervise and manage Adv Mhaga's activities in respect of TRC matters."

Do you see that?

ADV ACKERMANN: I see it.

20 ADV GWALA: Would it be fair to conclude that as at June 2008 you knew or you were aware that Mr Mhaga was in fact working on the TRC matter?

ADV ACKERMANN: He was working on a lot of TRC matters.

ADV GWALA: Say that again.

ADV ACKERMANN: He was working on quite a few TRC matters.

ADV GWALA: Yes, all right. An assertion that you did not know that he was working on TRC cases until recently would be incorrect?

ADV ACKERMANN: If you say recently, I did not know that he worked on TRC matters.

ADV GWALA: I am saying an assertion that you did not know until recently that he was working on TRC cases would be incorrect.

ADV ACKERMANN: What is recently? You hear what I am saying? What is recently?

ADV GWALA: Before these proceedings, for instance.

10 ADV ACKERMANN: I did not know; if you are referring to Mr Mpshe's letter to Reverend Chikane where he states that he took me off and he has appointed Mhaga, Ramaite and the task team to manage the TRC meetings. I was never informed by any person that that is the position.

ADV GWALA: Okay, in June 2008 you would have known that.

ADV ACKERMANN: In 2008; I do not know when he started. Was it end 2005 until...? I left in 2013. He was probably working on TRC matters if he was still employed to this. All the time he is not working only on TRC matters. There are quite a few other matters he  
20 probably worked on too. When I see a good case that will fit him, I will give it to him, not relevant in relation to TRC matters.

ADV GWALA: Thank you, Chairperson. Thank you for the indulgence.

CHAIRPERSON: Thank you, Mr Gwala. Mr Varney?

ADV VARNEY: Thank you, Chairperson. Can I just check,

Commissioners? Can I be heard?

CHAIRPERSON: Yes, you can be heard.

ADV VARNEY: Mr Ackermann, can you hear me?

ADV ACKERMANN: I can hear you.

RE-EXAMINATION BY ADV VARNEY: Perhaps let us just start the re-examination by referring you to the statement of Adv Mhaga. Perhaps Mr Venter can secure the statement of Adv Mhaga, so we can just explore the point just raised with you by Mr Gwala. And once you get that statement, I can take you to the heading on page 21. It  
10 says the period 2007 to 2009, paragraph 77 and 78. Just to save time, I am going to read the relevant extracts and you can comment.  
Paragraph 77:

“From late 2007 until approximately June 2009 there was a marked decline in progress on TRC-related matters. As a result, the TRC Task Team became largely dysfunctional and my role within that structure was effectively rendered redundant.”

Then skipping to paragraph 78:

20 “This was a professionally difficult period characterised by lack of prosecutorial work in an effort to maintain my courtroom proficiency. I requested my former DPP, Mr [indistinct] to undertake circuit court work in the Transkei. He says on his return to Pretoria, requested Adv

Ackermann SC to facilitate my secondment to the Specialised Commercial Crime Unit to broaden my experience.”

Do you recall that?

ADV ACKERMANN: Ja, I do not recall that during that period, but [indistinct]. I know of that he wanted to do some litigation that I know and there were no litigation work at that stage. I was also under the impression that there were quite a few cases in the Eastern Cape. I do not know at what stage, but there were quite a few cases that he  
10 managed in the Eastern Cape, but that sounds... I am not going to dispute that.

ADV VARNEY: Yes, it was the evidence of Adv Mhaga before this Commission when he testified last week that because of the lack of investigative capacity at the PCLU, the TRC cases were not being taken forward; and as a result, he was not being exposed to work in court, which prompted his request.

ADV ACKERMANN: Ja, and I think what played a role in not investigating those matters; there was an instruction from, direction from somewhere also of the Ginwala Commission. We must wait for  
20 the Ginwala Commission to make findings on certain matters. I think that was also a reason why no progress was made.

ADV VARNEY: All right, let us return to your evidence under cross-examination by Mr Gwala yesterday. He asked you when political interference started formally and you mentioned that the terms of reference do not speak of political interference or even interference,

but rather whether efforts or attempts were made to influence or pressure to stop the NPA or SAPS from pursuing the TRC cases.

And according to my notes, you mentioned that you regarded the denial of investigators as a form of interference and the intervention of the Minister of Justice directing the Acting NDPP to suspend working pending the guidelines as political interference. Mr Gwala then put it to you that this was just a mere temporary pause and you mentioned that the suspension was about two years, because the prosecution policy amendments were promulgated in  
10 December 2005 and came into effect during 2006.

Now, I want to ask you whether the suspension was in reality temporary in practise, given that between 2008 and 2010 Adv Macadam was still pleading with the SAPS for investigators and from records before this Commission, since the Chikane case in September of 2007, the plea and sentence agreement which went ahead amidst much controversy.

There has not been a single prosecution or inquest in respect of the TRC cases until 2016 when Nokuthula Simelane case was enrolled; and this is only after Thembi Simelane went to court to  
20 compel a decision; so a period of inaction for nearly 10 years. In these circumstances, Mr Ackermann, can it really be said that in practise the suspension of the TRC cases was just temporary?

ADV ACKERMANN: No, I agree with the statements you have made.

ADV VARNEY: Now it was put to you by Mr Gwala, and we are

returning to the evidence of Mthunzi Mhaga; that notwithstanding the obstacles, such as denial of investigators and the moratorium imposed towards the end of 2004; that Adv Mhaga was able to successfully proceed with a case in 2005. And I understand the suggestion was that if this case went ahead, then all the other cases could have gone ahead.

Now in fairness to you, you should be given the basic details of that case. It related to the murder of one Zokwe, an MK cadre by the Transkei Security Police in 1988. It was not, that case was not  
10 with the PCLU, but with Adv Mhaga while he was at the Mthatha DPP's office. Now the investigations and the prosecution itself commenced before 2005, at least during 2004, if not earlier; and at that point Adv Mhaga was not with the PCLU. Now, is it correct that following the declaration of the TRC cases as priority crimes, most of the dockets were transferred to the PCLU?

ADV ACKERMANN: That was direction by Mr Ngcuka that it... but I was not aware of that case and it never landed on my desk. That is what I said yesterday that I believe that is probably a case that was in Mthatha. I know there were also cases in KwaZulu-Natal that  
20 [indistinct].

ADV VARNEY: And is it also correct that the denial of investigators from 2003 onwards was directed specifically at the TRC cases held by the PCLU?

ADV ACKERMANN: That is correct. I may add that all prosecutors, like Mr Mhaga, you have a person in your district that you know and

that will do some investigations. I do not even think they were aware of the fact that there was a moratorium on the investigating TRC matters. I do not know what happened in the Transkei, but I know he prosecuted that matter.

ADV VARNEY: Yes, and we heard the commendable work he did and the attempts against all the odds to pursue these cases; and if I recall his evidence, he said these were special efforts that he made, notwithstanding the fact that he did not have investigating officers. I do not know whether you heard that evidence.

10 ADV ACKERMANN: Yes, I do not know what time it was. If it was during my time, I would have given the go-ahead just to canvass all these cases that we have. So in the event that investigators become available; that we can immediately proceed. It makes sense to me. You know at this stage I cannot recall who gave him that direction to go and investigate it in the Eastern Cape. He was from the Eastern Cape and I usually gave him the cases that were in the Eastern Cape area.

ADV VARNEY: Well, his evidence was actually you who issued the instruction that he should go down to the Eastern Cape and do what  
20 he could; and to his credit, he was able to engineer a plea and sentence agreement in one matter in 2006 and he has set out other matters. We are not going to go through them, but essentially he says that they suffered the same fate as the other TRC cases because of a lack of investigative support.

ADV ACKERMANN: In the audit report that we submitted that he

probably drafted, you will see he was involved in quite a few TRC matters where he put his name in brackets that those are his cases.

ADV VARNEY: Yes. Now the instruction in November 2004 to suspend the TRC cases from the Minister of Justice to the Acting NDPP, Adv Ramaite, which in turn was relayed to you, am I right in saying that applied specifically to the cases held by the PCLU?

ADV ACKERMANN: That is correct.

ADV VARNEY: So if we can just return to that 2005 case, which Adv Mhaga worked on before joining the PCLU while he was in Mthatha.

10 It was known as the Chiyani case, T-i, Chiyani?

CHAIRPERSON: Tiyani.

ADV VARNEY: Tiyani. I understand the spelling is T-i-y-a-n-i. Would it be correct to say that that case was an outlier or an exception, because it was not on the books of the PCLU; and most significantly, the investigations commenced before a moratorium was imposed in November 2004.

ADV ACKERMANN: I did not even know that it was a TRC matter. As far as I recall, he said he has got a case that is being remanded and postponed and the case was adjourned. If I recall, he never told  
20 me that this is a TRC case that I am conducting in Mthatha or wherever it was.

ADV VARNEY: Now, yesterday Mr Gwala criticised you for not prosecuting those behind the blocking of the TRC cases; and he put up as an example your discussions with Attorney Jan Wagenaar who was representing members of the former security forces, who

apparently told you that the former generals had been meeting with the ANC leadership to come up with, to search for a political solution to prevent prosecutions of the security forces. Now, will I be right in saying that what you heard from Attorney Jan Wagenaar was hearsay and would that have provided the basis for a prosecution against anyone?

ADV ACKERMANN: You know, it is hearsay, but even if it was proved, I was not going to lay any charges against them at that stage, because there are these altercations. It happens in court.

10 ADV VARNEY: Now in relation to what efforts that you and then NDPP, Adv Vusi Pikoli took once you were facing these challenges, am I right in saying that you did not sit on your hands? It was raised with your superiors. Am I correct in saying that you and Adv Pikoli appeared before a Justice Portfolio Committee meeting on 3 May 2007?

ADV ACKERMANN: That is correct.

ADV VARNEY: In which Adv Pikoli raised the alarm by stating that the NPA was being held to ransom by the former generals.

ADV ACKERMANN: That is correct. I was present.

20 ADV VARNEY: Now, Mr Gwala has put it to you that, notwithstanding the fact that those in the task team – this is the task team that was set up after the prosecution policy amendments had been promulgated. So notwithstanding with the fact that those in the task team of the DG's Forum believed that they should play a role in the prosecution process, the NDPP stood his ground.

And it was also put to you by Mr Gwala that nobody specifically asked you not to prosecute the Chikane case or any other matter; and you did answer comprehensively, the opposition that you faced in the Chikane case. I am not going to ask you to repeat that. And you also referred to the email exchanges between Adv Mhaga and Jacobs and then yesterday in re-examination I drew your attention to the letter from Commissioner Selebi to Pikoli in February of 2007.

Now, am I right in saying that the objection that the NPA had  
10 at the time was that in respect of the TRC cases, those in the task team and the DG's Forum were expecting the NDPP not to make a decision until he had heard from the DG's Forum?

ADV ACKERMANN: Yes, the document speaks for itself.

ADV VARNEY: And is it ...[intervenes]

ADV ACKERMANN: That is not the only document. There are quite a few documents to that effect. I have seen Mr Selebi, Mr Menzi Simelane. Even during the minutes there is also probably a referring to they must go back to their principles or something to that effect. It is minuted in one of the documents.

20 ADV VARNEY: Yes, we do not have time to traverse all the documents now, but is it correct that you and Adv Pikoli found this objectionable and an unwarranted interference in the work of the NPA, because effectively it meant that your hands were tied until you heard from the DG's Forum?

ADV ACKERMANN: Of course.

ADV VARNEY: Now Mr Gwala has put it to you that the deliberations of the task team were not binding on the NPA and nobody succumbed to it and you could simply have gone ahead with prosecutions. In your view, did the interdepartmental task team ever facilitate the investigation and prosecution of the TRC cases?

ADV ACKERMANN: No, they have not produced any investigator.

ADV VARNEY: So they never facilitated the provision of any investigating officers for the TRC cases.

ADV ACKERMANN: That is correct.

10 ADV VARNEY: And finally, Mr Ackermann; we see that the NPA leadership in the mid-2000s, particularly under the leadership of then NDPP Pikoli, an attempt was made to stand up to the efforts to stop the TRC cases. And we have seen that the NPA in 2018 in court papers in the Rodrigues matter admitted that it had been subject to interference. Now what do you make of the current NPA asserting that there was no interference in the TRC cases?

ADV ACKERMANN: They do not know the facts.

ADV VARNEY: Thank you, Mr Ackermann; no further questions.

20 CHAIRPERSON: Thank you, Mr Varney. Ms Moroka? Ms Moroka, bring the mic closer to you. We cannot hear you.

ADV MOROKA: My apologies, Chair. This is not conducive to lots of paper and mics included. I said good morning, Mr Ackermann.

ADV ACKERMANN: Good morning.

CROSS-EXAMINATION BY ADV MOROKA: I would like us to start off with the foundational laws that determine the powers of the NDPP,

your powers and the minister's powers; and if you could go to section 179. I am going to try and get to that section 179 and to the NPA Act and ask you to ...[intervenes]

ADV ACKERMANN: I see you have referred...

ADV MOROKA: I have not finished; and ask you to remember the sections that I have read out to you that we agree on when I then proceed to ask you questions. Would that be okay with you?

ADV ACKERMANN: That is fine.

ADV MOROKA: Section 179 of the Prosecuting Authority in the  
10 Constitution gives the national director the powers or assigns to him the power to be the head of the Prosecuting Authority. That is correct.

ADV ACKERMANN: Where does it say that?

ADV MOROKA: It says there is a single national prosecuting authority in the Republic, structured in terms of the ...[intervenes]

ADV ACKERMANN: In which...?

ADV MOROKA: Let me finish. Section 179 structured in terms of an Act of Parliament and consisting of a National Director Public Prosecutions who is the head of the Prosecuting Authority. Would  
20 you agree with that, my reading of that section?

ADV ACKERMANN: Let me [indistinct]. Yes, I see structured in terms of the Act of Parliament and consisting of the National Director. I am busy [indistinct]. Where does it say that she is the head? You know I am just reading 179(1).

ADV MOROKA: 179(1)(a). He is the head of the Prosecuting

Authority.

ADV ACKERMANN: Yes, the national director. I was under the impression you said [indistinct]. Yes, that is correct.

ADV MOROKA: And if you go to subsection (5), 179(5)(a), it says:

“He must determine with the concurrence of the cabinet member responsible for the administration of justice and after consulting the directors of public prosecution, prosecution policy which must be observed in the prosecution process.”

10

You see that?

ADV ACKERMANN: I see that.

ADV MOROKA: And you agree that is the law?

ADV ACKERMANN: Well, it says. That is the law. It is here.

ADV MOROKA: And (b) thereof says:

“Must issue policy directives which must be observed in the prosecution process.”

ADV ACKERMANN: I see that.

ADV MOROKA: I do not know whether you have it in front of you,  
20 but if I refer you to the powers, duties and functions of the national director, section 22 of the NPA Act also refers to the national director as the Head of the Prosecuting Authority. Would you agree with that?

ADV ACKERMANN: Yes, agreed.

ADV MOROKA: Section [indistinct] thereof says:

“In accordance with section 179 of the Constitution, must determine prosecution policy.”

ADV ACKERMANN: You are breaking up. Can you just repeat that, please?

ADV MOROKA: And then in section 22 of the Act... I am sorry about that. We have to re... Powers, duties and functions of the national director, subsection (2) of section 22 again contemplates that the national director must determine prosecution policy and issue policy directives.

10 ADV ACKERMANN: That is correct.

ADV MOROKA: Now, if we go to section 22(4), it says or provides that, at Roman letter (iii) it provides that:

“With exercising his or her powers in terms of section 2, the national director, that is, may advise the minister on all matters relating to the administration of justice.”

ADV ACKERMANN: Yes, and I know it is “may”, not “must”.

ADV MOROKA: If you say that, Mr Ackermann, can I then refer you to 179(6) of the Constitution?

20 ADV ACKERMANN: [Indistinct].

ADV MOROKA: You say there:

“The section in the Constitution, 179(6) provides the cabinet minister responsible for the administration of justice must exercise final responsibility over the Prosecuting Authority.”

ADV ACKERMANN: Yes.

ADV MOROKA: And it is a “must” there.

ADV ACKERMANN: It is not clear to me what it means.

ADV MOROKA: I am just letting you know that there is that provision that gives the minister overall responsibility for the administration of justice. Is that correct?

ADV ACKERMANN: Correct. It says [indistinct] responsible.

ADV MOROKA: I beg your pardon?

ADV ACKERMANN: I just want to read to see if it is “must” exercise  
10 the Prosecuting Authority.

ADV MOROKA: If you could, Mr Ackermann; I do not hear you.

ADV ACKERMANN: I say, you know, I do not want to get in a legal argument. It says: “The cabinet member responsible for administration of justice.” That is; now we know who it is; “must exercise final responsibility over the Prosecuting Authority.”

ADV MOROKA: Thank you. And then subsection 22, if we go back to that subsection, talks to the national director; I beg your pardon, section 22(7).

20 “The national director shall develop, in consultation with the minister or person authorised thereto by the minister and the directors, training programmes for prosecutors and investigators.”

That is the law. Am I correct?

ADV ACKERMANN: Ja, I have got it now in front of me. It is 22(7).

ADV MOROKA: Section 22, subsection, I mean 22(7).

ADV ACKERMANN: Ja, okay, I have got it here.

“The national director shall develop, in consultation with the minister or person authorised thereto by the minister and the directors, training programmes for prosecutor and investigators.”

ADV MOROKA: Thank you.

ADV ACKERMANN: Yes.

10 ADV MOROKA: And if you go to subsection 22(4), it says:

“With a view to exercising his or her powers in terms of subsection (2).”

If you recall, the minister is giving certain powers in terms of section 179 of the Constitution.

“The National Act giving effect to the Constitution then directs that with a view to exercising these powers.”

ADV ACKERMANN: Is that now section 4?

20 ADV MOROKA: No, section 22, sorry, section 22(4) of the National Act. I am trying to show you how ...[intervenes]

ADV ACKERMANN: Ja, I have got it in front of me, but it will take me 10 minutes to read.

ADV MOROKA: Can I then tell you why I want you to read it; because the National Act gives substance and content to section 179 of subsection (6) of the Constitution in section 22(4). So if you could

then read the whole of (a) of subsection (4), section 22.

ADV ACKERMANN: Okay, just (a)?

ADV MOROKA: (4)(a).

ADV ACKERMANN: Okay.

“With a view to exercise his or her powers in terms of subsection (2), may conduct any investigation he or she may deem necessary in respect ...[intervenes]

ADV MOROKA: Can I interrupt? May I interrupt? I am so sorry, Adv  
10 Ackermann. It is because we do not want to burden the record. I was going to direct you to subsection (2) and (3).

ADV ACKERMANN: Ja, so let me see. I must go to subsection (3) now. Unfortunately I am here on a computer that Mr Venter has with him.

ADV MOROKA: I am too.

ADV ACKERMANN: You want me to read (3)?

ADV MOROKA: No, no, I just want you to just agree that those are the provisions in the act. I think ...[intervenes]

ADV ACKERMANN: No, I am not going to read [indistinct].

20 ADV MOROKA: Ja, everybody in the room has it.

COMMISSIONER KGOMO: Mr Ackermann, just ...[intervenes]

ADV ACKERMANN: I beg your pardon?

COMMISSIONER KGOMO: Mr Ackermann, just be patient. Just listen, because if you talk simultaneously, it just bedevils the transcription.

ADV ACKERMANN: I apologise.

ADV MOROKA: I was going to say, Mr Ackermann you do not need to read it out loud. I was going to give you a minute just to read those sections and then refer you to another section that I want you to also read.

ADV ACKERMANN: If you can just give me the bottom line what you want to make, because I can foresee that you now, after reading all this, you are going to ask me 'is it correct that', and then I am going to say no, I am not prepared to give my opinion now.

10 CHAIRPERSON: But Mr Ackermann ...[intervenes]

ADV ACKERMANN: You know, if you give me the bottom line...

CHAIRPERSON: Mr Ackermann, you are being requested just to read for your own sake the relevant section that you are being referred to. The questions will come thereafter.

ADV ACKERMANN: Chair, I will read 3 and 4.

CHAIRPERSON: Just silently read.

ADV ACKERMANN: Yes, I am [indistinct]. I am just reading paragraph 4(a) or must I read the subparagraph 4, the whole paragraph 4?

20 ADV MOROKA: It was going to be 4. Yes, if you have read 4 and then you go to subsection 4(a) ...[intervenes]

ADV ACKERMANN: No, I have not finished with 4.

ADV MOROKA: I beg your pardon?

ADV ACKERMANN: I finished with 3. You said I must read 3 and now I am going to read 4(a). It is 4(a), (b), (c), (d), (e), (f). Must I

read all the...?

ADV MOROKA: No.

ADV ACKERMANN: What must I read?

ADV MOROKA: You read 4(a)(ii) and (iii).

ADV ACKERMANN: Okay.

ADV MOROKA: And then you read subsection (6)(a) and that is all you are going to be reading; and then we will be done.

ADV ACKERMANN: And then you said I must read after Roman (ii) and (iii)?

10 ADV MOROKA: Subsection (6), subsection (6).

ADV ACKERMANN: Yes.

ADV MOROKA: Thank you. Can I then refer you, Mr Ackermann to your affidavit, the 2015 affidavit, paragraph 1 where you tell the... no, you did not, while you confirmed, but it was in different circumstances when you deposed to this affidavit, but it was tabled at this Commission. Paragraph 1 of your affidavit, you explain that you are a senior counsel, a former Special Director of Prosecutions. And therefore, the question that I pose, Mr Ackermann is that; as a Special Director of Public Prosecutions, you are bound or you were  
20 then bound by the sections that we dealt with, you and I – section 179 of the Constitution and section 22 of the NPA Act. Is that correct?

ADV ACKERMANN: [Indistinct] I will accept that, but the last section you gave me to read has got nothing to do. The rest is about the conduct of prosecutors. So it does not make sense to me.

ADV MOROKA: Even if it does not make sense, Mr Ackermann; the

point that I am making to you is that when you were appointed by the president, you bound yourself to the provisions of the Constitution and the NPA Act.

ADV ACKERMANN: That is correct.

ADV MOROKA: Thank you. And you accepted that the national director had specific powers and obligations that you were obliged to respect.

ADV ACKERMANN: Well, I accept that.

ADV MOROKA: And that the minister in terms of the very same  
10 provisions of 179 and 22 also had obligations that were granted or imposed on her.

ADV ACKERMANN: That is correct.

ADV MOROKA: Now, can I take you to your evidence with respect to Dr Ramaite where you... let me start off by saying you told this Commission on 5 March that you read Dr Ramaite's interaction with Adv Semanya relating to the consultation of Ramaite and Semanya. Is that correct?

ADV ACKERMANN: Just repeat that [indistinct].

ADV MOROKA: When you gave evidence before this Commission,  
20 you pointed out that you had read what Mr Semanya and Dr Ramaite spoke about in their consultation.

ADV ACKERMANN: Oh, yes. I am now [indistinct] somebody else. The evidence leader, ja, that is correct.

ADV MOROKA: Yes, yes; that you knew when you came here that what Mr Semanya and Mr Ramaite had discussed in their

consultation.

ADV ACKERMANN: Ja, [indistinct].

ADV MOROKA: And I say, I point this out to you, because if you go to your affidavit of 2015 and when you talk about political interference, paragraph 32 thereof, you talk about the first act of political interference and you talk about the fact that there was... you do not mention names in that paragraph.

ADV ACKERMANN: Is that paragraph 32?

ADV MOROKA: Paragraph 32 of your affidavit.

10 ADV ACKERMANN: Yes.

ADV MOROKA: You do not mention who and how. Is that correct?

ADV ACKERMANN: That is correct.

ADV MOROKA: And then when you give evidence and you talk about the telephone call between Dr Ramaite and the minister. Is that correct?

ADV ACKERMANN: Let me see. Is that the next page?

ADV MOROKA: No, no, no, I am not asking you about that. I am asking about your evidence. You talk about; you tell us you know that the minister telephoned Dr Ramaite.

20 ADV ACKERMANN: That is correct.

ADV MOROKA: You did not speak to the minister?

ADV ACKERMANN: No, I did not.

ADV MOROKA: You did not know the content or context of that telephone call?

ADV ACKERMANN: Only the contents as conveyed to me by Dr

Ramaite.

ADV MOROKA: Yes. If I may take you, Mr Ackermann to the evidence of Mr Pikoli when... may I start off by saying that you do know that Mr Pikoli was the DG of the Department of Justice before he came to the NDPP.

ADV ACKERMANN: Yes, I know that.

ADV MOROKA: I beg your pardon, Chair. It is the evidence of Mr Ngcuka. Mr Ngcuka told this Commission; and if you recall, it is Mr Ngcuka as the NDPP and Mr Pikoli as the national, as the DG.

10 ADV ACKERMANN: It is correct.

ADV MOROKA: Mr Ngcuka tells the Commission that... I am still looking for the extract. Mr Ngcuka tells the Commission that he was invited by Mr Pikoli to a meeting under the auspices of Mr Pikoli being the DG to a meeting, if I may read that transcript to you. It is at page 43 of the transcript and it is Mr Ngcuka's evidence.

ADV ACKERMANN: Just read it to me and I will reply.

ADV MOROKA: Thank you. He says:

“No attempts during my time, nobody tried to do anything.”

20 But I will skip that and then he says:

“But what I can say then, then say and probably we are going to get to it. We were invited into a meeting that was convened by the Director-General of the Department of Justice to look into amending the prosecutorial policy in so far as it

deals with TRC matters.”

Did you hear that, Mr Ackermann?

ADV ACKERMANN: I hear that, yes. I follow, yes.

ADV MOROKA: That is Mr Pikoli.

CHAIRPERSON: Mr Ngcuka.

ADV MOROKA: No, Mr Ngcuka talking about Mr Pikoli looking at changing the prosecutorial policy.

ADV ACKERMANN: That is correct.

ADV MOROKA: The moratorium comes in or the telephone call from  
10 the minister occurs in 2004 before Mr Pikoli gets to the office of the  
NDPP. You agree to that?

ADV ACKERMANN: Well, that is when it occurred [indistinct].

ADV MOROKA: So ...[intervenes]

ADV ACKERMANN: Now but I know it was...

ADV MOROKA: And in February 2015, 2005 when Mr Pikoli starts at  
the NDPP, he has already started a process into looking at that  
prosecution policy. Would I be correct? If you recall, he started  
...[intervenes]

ADV ACKERMANN: I do not know about that.

20 ADV MOROKA: You would not dispute that?

ADV ACKERMANN: July 2005 he started.

ADV MOROKA: You will not dispute the evidence that says Mr  
Ngcuka was invited to a meeting by Mr Pikoli?

ADV ACKERMANN: I do not know anything about that.

ADV MOROKA: You will not dispute that when Mr Pikoli came in as

an NDPP, he proceeded to look at amending the policy, as he was entitled to do.

ADV ACKERMANN: Is that now July 2005?

ADV MOROKA: I said he started work in February 2005.

ADV ACKERMANN: That is correct.

ADV MOROKA: And he continued with the work of looking at amending the policy.

ADV ACKERMANN: I hear you.

ADV MOROKA: Mr Pikoli was asked a few questions by Mr  
10 Semenya. Do you know of the questions that Mr Pikoli was asked?

ADV ACKERMANN: Ja, I know of it. I heard him.

ADV MOROKA: The questions came on 13 March 2026 and I refer you and the honourable Commission to page 176 of those questions; and it is at para, if I start at para, at line, at page 176, line 7 where Mr Semenya says ...[intervenes]

ADV ACKERMANN: Yes.

ADV MOROKA: Mr Semenya says:

“And it may be open for argument to others to say  
that these...”

20 And they are talking about the policies and finding a way of looking at amending of policies; and he says:

“These were efforts intended to widen the ambit  
of opportunities to reconcile the reconciliation  
effort. Am I right?”

Asked Mr Semenya; and Mr Pikoli answers:

“That is correct, Commissioners.

As opposed to efforts at stopping the work of the  
NPA. Am I right?”

Mr Pikoli answers:

“You are right. It could not have been, you know,  
an attempt to stop the work of the NPA.”

And that is the ...[intervenes]

ADV ACKERMANN: [Indistinct]. He starts off by saying:

“And it may be open for argument to say.”

10 He knows it is open for argument, because reconciliation at that stage  
does not come into the picture. Reconciliation was not an object of  
any structure after, what will it be, 15 May 20... what was it, 23, 2003.  
So, you know, you talk here about; and Mr Semenya sees the  
problem when he says “it may be open for argument”, because at that  
stage reconciliation is not relevant.

ADV MOROKA: Mr Ackermann, Mr Pikoli is the man empowered by  
the act, amongst others, to look at the policies, not alone, but with the  
help of his prosecutors and deputy NDPPs. He is the one who is  
responsible for making policy, right?

20 ADV ACKERMANN: Yes, but I say it is unconstitutional to take  
reconciliation ...[intervenes]

ADV MOROKA: I did not ask you about... I did not ask you about  
reconciliation. I asked you the fact that Mr Pikoli had the powers to  
look at policies, amending them, improving them. He had that power.

ADV ACKERMANN: He has a power to amend it to constitutional

policies. He cannot do anything that is unconstitutional.

ADV MOROKA: That is correct, but he has the power, and my question is ...[intervenes]

ADV ACKERMANN: Yes.

ADV MOROKA: He has the power and he says whilst exercising that power, it could not have been an attempt to stop the work of the NPA. That is what Mr Pikoli says.

ADV ACKERMANN: I hear what is he saying.

ADV MOROKA: Thank you. So, if we move on, Mr Ackermann; I  
10 want us to move to your evidence about the meeting in Cape Town. You remember Mr Ramaite gave evidence about the meeting in Cape Town. I do not think you were there.

ADV ACKERMANN: Ja, I was not.

ADV MOROKA: But you do say in the transcript.

COMMISSIONER KGOMO: The meeting in Cape Town, what was the date?

ADV MOROKA: It was the 4<sup>th</sup> of... No, the transcript is 4 March 2026 at page 52, lines 18 to 17. We will look at the date. And we are talking really in respect of the memo that you penned to Mr Pikoli  
20 dated 16 May 2006; and then in the transcript you say:

“Shortly thereafter, Dr Ramaite informed you that he had attended a meeting in Cape Town.”

I will not read the whole transcript, Mr Ackermann. It is long. As a result ...[intervenes]

ADV ACKERMANN: Ja, I know what...

ADV MOROKA: You know what it says?

ADV ACKERMANN: Ja.

ADV MOROKA: Okay, thank you. So I can ask you questions relating to that meeting.

ADV ACKERMANN: Correct.

ADV MOROKA: You have already said you were not at the meeting.

ADV ACKERMANN: No, I am not there.

ADV MOROKA: And you would admit that you did not meet with the minister, you yourself.

10 ADV ACKERMANN: No. No, I have not met the minister there.

ADV MOROKA: And if you look at what Dr Ramaite reported to you about the meeting, the meeting asked of Dr Ramaite to obtain a briefing on progress.

ADV ACKERMANN: No, what I read is; he attended a meeting and he further informed me that Commissioner Selebi had alleged that the NPA was planning to paralyse government by arresting a large number of prominent government officials who had previously been involved in MK activities.

20 ADV MOROKA: And then there was the request for a report, which you then ...[intervenes]

ADV ACKERMANN: I do not know if there was...

ADV MOROKA: You prepared a memo for assisted ...[intervenes]

ADV ACKERMANN: [Indistinct].

ADV MOROKA: If I may finish. In the transcript at page 12, lines 4 to 12, you state that you assisted Dr Ramaite and you prepared a

memo for the minister, stating the correct position. You did not do that?

ADV ACKERMANN: Yes, do we have that memo?

ADV MOROKA: I will go to the transcript and not to the memo; and if we go to the transcript of 6 March.

ADV ACKERMANN: Yes, I am there.

ADV MOROKA: Yes. You say:

10                    “They informed me that it had been alleged by the  
                         national commissioner that the PCLU was in  
                         possession of 400 dockets and planned to  
                         paralyse the government by arresting key  
                         government officials.”

That really was the subtext of this memo. Is that correct?

ADV ACKERMANN: I do not have the memo in front of me, so I do not know, but you are probably right. I do not see.

ADV MOROKA: And then it says or you say:

                         “I was required to assist Dr Ramaite to compile a  
                         lengthy memorandum to the Minister of Justice,  
                         Brigitte Mabandla stating ...[intervenes]

20   ADV VARNEY: I am sorry to interrupt my learned friend, but we do not know where she is; if she could just indicate whether she is in the memo or the transcript.

ADV MOROKA: It is day 6 ...[intervenes]

ADV VARNEY: And if she refers to the memo, could she refer us to the record?

CHAIRPERSON: She is in the transcript, Mr Varney. Am I correct, Ms Moroka that you are in the transcript?

ADV MOROKA: I am in the transcript.

ADV VARNEY: And the reference to the memo; I think it will be helpful to the witness if we got a reference to that one.

ADV MOROKA: I am reading the transcript, the evidence of Mr Ackermann.

CHAIRPERSON: Yes.

ADV VARNEY: Can we have a page number, please?

10 ADV MOROKA: It is page...

ADV ACKERMANN: [Indistinct].

ADV MOROKA: Mr Ackermann, I thought you were saying something.

ADV ACKERMANN: Yes, I am on a page where I state, and I think you refer to that, is:

20 "They informed me that it had been alleged by national commissioner that the PCLU was in possession of 400 dockets and planned to paralyse government by arresting key government officials who had been part of the ANC Liberation Movement. The allegation was not true, but as a consequence, I was required to assist Dr Ramaite to compile a lengthy memorandum to the Minister of Justice, Brigitte Mabandla, stating the correct position and again

confirming that there was no investigation against  
the ANC leadership. I see there is a document.”

ADV MOROKA: Thank you.

ADV ACKERMANN: Is that...?

ADV MOROKA: That is the extract I sought. I am assuming my  
learned friend has found it. So you compiled a memo to the minister  
stating the correct position. Am I correct? That is what you say.

ADV ACKERMANN: You know, I am not too sure whether I compiled  
it or Chris and I compiled it, but if I can have a look at the memo. If  
10 there are long paragraphs, I will know it is Chris Macadam. If it is  
short paragraphs, I will know it is mine.

ADV MOROKA: Do you disagree with this memo?

ADV ACKERMANN: Let me see the memo, please.

ADV MOROKA: I have not got the memo in front of me, Mr  
Ackermann.

ADV VARNEY: With respect ...[intervenes]

ADV MOROKA: But I am ...[intervenes]

ADV VARNEY: Chairperson, that is an unfair question, because the  
witness simply does not have the memo before him.

20 CHAIRPERSON: Yes, Mr Moroka?

ADV MOROKA: Chair, I can find the memo, but this is his evidence.

CHAIRPERSON: Does he disagree with the memo or what or does  
he disagree with the fact that he prepared the memo?

ADV MOROKA: I am merely talking about relating to the evidence  
that he gave, Chair.

CHAIRPERSON: Yes.

ADV MOROKA: If my learned friend wants the memo, I will look for the memo. I do not have the memo in front of me. I am talking to his evidence.

CHAIRPERSON: Yes, and what do you say about the memo with regard to his evidence?

ADV MOROKA: I say nothing about the memo. I say this is what you said in your evidence.

CHAIRPERSON: Ja.

10 ADV MOROKA: And am I to understand that you are saying you did not compile the memo?

ADV ACKERMANN: Show me the memo and I will have a look. You must understand that Dr Ramaite is sitting there. He asked me for information. I will give him the information or he will ask me: can you just give me a short draft on the matter? And then his secretary might type it. But it is; I assisted him or Chris assisted him in drafting a memo. I do not think my name appears anywhere on that memo if it is to the minister.

20 ADV MOROKA: Can I be helpful, Mr Ackermann? I do not want us to go into the content of the memo. What I want to find out from you is; there was nothing untoward in writing or preparing a memo for the minister and the minister asking for a memo about these [indistinct]. Is there anything untoward about that? The law gives them; had the right to ask for reports and she was being given a report; anything wrong with that?

ADV ACKERMANN: No, no.

ADV MOROKA: Thank you. Can we then go to the meeting with the minister of 2007? And for that meeting, if I could ask you to look at the transcript of 6 March and I refer you to page 53.

ADV ACKERMANN: [Indistinct]. Yes, I see that.

ADV MOROKA: Sorry, Mr Ackermann, [indistinct] musical chairs here with the recording. You see; you are there?

ADV ACKERMANN: Yes.

ADV MOROKA: It is at line 10.

10 ADV ACKERMANN: Yes.

ADV MOROKA: And we confirm that you went to this meeting with Mr Ramaite.

ADV ACKERMANN: That is correct.

ADV MOROKA: Can I just understand one small thing. In your evidence under cross-examination by Mr Masuku, you said you never ever met Mr Simelane or discussed the TRC cases with Mr Simelane.

ADV ACKERMANN: You say I said that. I will accept that.

ADV MOROKA: But Mr Simelane ...[intervenes]

ADV ACKERMANN: Okay, just a question. What did I say?

20 ADV MOROKA: You were asked whether you had met Mr Simelane or whether you had spoken to him about TRC cases. You talked about the peace pipe incident. You remember that?

ADV ACKERMANN: Ja, it was at that stage when... I hear what you are saying. I then in fact did speak to him about the TRC matters when he was a director-general, not the National Director of

Prosecutions.

ADV MOROKA: So you did speak to him when he was in the DG's, as a DG.

ADV ACKERMANN: Well, the record shows it.

ADV MOROKA: If I take you then to your transcript of the cross-examination by Mr Masuku; and this is transcript of 19 March, page 6, line 21 and page 8.

ADV ACKERMANN: Yes. You know, read it out to me and I can confirm that or not satisfied.

10 ADV MOROKA: It says:

“Okay, but you have never spoken to Mr Simelane about the TRC cases at all.”

And your answer is:

“I do not think so.”

ADV ACKERMANN: Yes, but that is in the context when he was the director, ag, when he was the National Director of Prosecutions. We never spoke about any TRC matter, as far as I can recall.

ADV MOROKA: If I move on. And then there is a question from Mr Masuku that says:

20 “So on either timelines, your answer is that you have never spoken to Adv Simelane either as DG or the NDPP on any cases that involved the TRC.”

And your answer is ...[intervenens]

ADV ACKERMANN: I was incorrect.

CHAIRPERSON: Just wait for the question to be completed, Adv Ackermann before you respond.

ADV MOROKA: The answer is:

“No, if you give me the facts to refresh my memory, I might say yes.”

ADV ACKERMANN: Well, there I said that. I asked him the question.

“No, if you give me the facts to refresh my memory, I might say yes.”

10 What I was meaning; I did not think of the meeting I had with him in his office in Pretoria, I mean in the minister’s office.

ADV MOROKA: Thank you. I just wanted to understand that, but because it seemed contradictory. So if we go to the meeting with the minister, Mr Ackermann. You said that the meeting with the minister was on the back of a memorandum that Mr Pikoli had sent to the minister on 10 July 2007.

ADV ACKERMANN: That is correct.

ADV MOROKA: Now to be clear; this memorandum that Mr Pikoli sent to the minister, informing her that the case had been set down  
20 for hearing in court on 17 August 2007 and that all accused will plead guilty to the charge of attempting to murder the reverend. So this was an information memo. Would I be correct?

ADV ACKERMANN: That is correct.

ADV MOROKA: And it followed several months of negotiations between the PCLU and the attorney for the accused.

ADV ACKERMANN: That is correct.

ADV MOROKA: And the minister was not involved and the minister did not know about the negotiations, nor about this case.

ADV ACKERMANN: I do not know what she do.

ADV MOROKA: Apologies, Chair. There is ...[intervenes]

ADV ACKERMANN: [Indistinct].

ADV MOROKA: There is a call from the head of security.

CHAIRPERSON: Where do you get that from, Ms Moroka?

ADV MOROKA: On my screen. What am I to do with it? Head of  
10 security sounds serious. Am I to ignore it, Chair?

CHAIRPERSON: Are you suggesting that we adjourn?

ADV MOROKA: No, I do not know, Chair. I was asking. There was a call and head of the secretary ...[intervenes]

CHAIRPERSON: No, we will know it until it is brought to our attention.

ADV MOROKA: We will know it until the bomb threat goes away, Chair.

CHAIRPERSON: Yes.

ADV MOROKA: Okay, thank you. So, Mr Ackermann, at that  
20 meeting the minister is surprised about events that are happening, because she had a firm impression that there were no TRC prosecutions. Is that correct?

ADV ACKERMANN: Yes, I was surprised too that she did say that.

ADV MOROKA: So, if one has a look at your transcript and the interaction between yourself and the minister; at no stage did the

minister say 'stop the prosecutions'. Did she?

ADV ACKERMANN: Which prosecutions [indistinct]?

ADV MOROKA: No, TRC prosecutions, because she is talking about prosecutions of TRC cases. My question is: at no stage did she say 'stop these prosecutions'.

ADV ACKERMANN: No, she said she was not, she was of the firm impression that there were not going to be prosecutions. That is what she stated.

ADV MOROKA: Can you then answer the question after saying that,  
10 Mr Ackermann?

ADV ACKERMANN: She did not stop [indistinct].

ADV MOROKA: The question is: the minister did not say 'stop prosecutions'.

ADV ACKERMANN: No.

ADV MOROKA: She did not ask you to stop prosecutions.

ADV ACKERMANN: No.

ADV MOROKA: There was nothing unlawful about her asking what is going on.

ADV ACKERMANN: No.

20 ADV MOROKA: The guidelines had been implemented and had been set aside. Would I be correct? I am not sure about the timeline, but they were implemented ...[intervenes]

ADV ACKERMANN: I do not think they had been set aside.

ADV MOROKA: Then.

ADV ACKERMANN: Then.

ADV MOROKA: So I reiterate; she did not say 'stop prosecutions' at that meeting.

ADV ACKERMANN: No.

ADV MOROKA: Now, in your evidence on 19 March, if I go to the transcript, page 12.

ADV ACKERMANN: I am on page 12.

ADV MOROKA: You say:

10 "I am of the view there was a common purpose  
between, amongst Mr Selebi, Mr Simelane, the  
minister, the cluster ministers to get rid of me. If  
you do not agree with that, say 'I do not agree'."

And then Mr Masuku then answers and tells you he is not under cross-examination. Do you recall that?

ADV ACKERMANN: Well, I read it.

ADV MOROKA: And Mr Masuku then asks you for evidence about Mr Simelane attempting to get rid of you. Do you recall that?

ADV ACKERMANN: Where is that? Give me the page number.

20 ADV MOROKA: We will get back to it. We are looking for the transcript. The question that I seek to ask is; you are not accusing the minister of being a party to hack in your computer. Are you?

ADV ACKERMANN: No, I do not think she has got the know-how.

ADV MOROKA: Well, yes. You do seem to have a dim view of her and an elevated view of yourself, Mr Ackermann. And you do not accuse the minister of being involved in the alleged forgery. Do you?

ADV ACKERMANN: You ask me. I do not think she was. She was

not involved, but joined it later on, she realised it is forged. I do not know what the position is.

ADV MOROKA: I did not get ...[intervenes]

ADV ACKERMANN: It is a forged letter. She had the letter in her possession.

ADV MOROKA: The question that I am asking, one, is that she was not party to being, a party to hacking your computer or the alleged forgery.

ADV ACKERMANN: No.

10 ADV MOROKA: That is all I am asking you.

ADV ACKERMANN: No, she was not involved with the forgery. I do not think so.

ADV MOROKA: And there is no evidence before this Commission accusing the minister of having a common purpose to get rid of you.

ADV ACKERMANN: Well, you know, it is a long answer I can give you. She was a member of the committee of ministers where it was openly discussed that they must get rid of me. I mean, if it is disputed, then Mr Simelane is not telling the truth, because he said; the minister was present when all the commissars and commanders  
20 gave evidence that Mr Pikoli must get rid of me.

ADV MOROKA: The minister was present where?

ADV ACKERMANN: It was a meeting. I do not know if it is a meeting at... There were many meetings where she was present where my removal of TRC cases was discussed.

ADV MOROKA: You were not in any of those meetings?

ADV ACKERMANN: No.

ADV MOROKA: You have no independent evidence that the minister was there ...[intervenes]

ADV ACKERMANN: If you say independent, I have Mr Simelane's evidence and I have Mr Pikoli's evidence.

ADV MOROKA: About the minister?

ADV ACKERMANN: Yes.

ADV MOROKA: Saying they must get rid of you?

ADV ACKERMANN: No, what I have is; there was a meeting, let us  
10 say in the West Wing. We do not have dates; where a minister was present where my removal was discussed. It was; in fact, the only point on the agenda was my removal.

ADV MOROKA: We do not have that evidence in this commission, Mr Ackermann.

ADV ACKERMANN: Well, Mr Pikoli gave evidence to that effect and Mr Simelane.

ADV MOROKA: That there was a meeting where your removal was discussed with the minister? You say nothing about that.

ADV ACKERMANN: No, she was present. All the ministers were  
20 there, including Minister Mabandla.

ADV MOROKA: Minister Mpshe has given evidence about how it came about that he removed you from the TRC, specifically from the dealing with TRC cases. Do you remember that?

ADV ACKERMANN: Yes, I remember that.

ADV MOROKA: You remember that he says that it was his decision

and not the ministers, nor Mr Simelane?

ADV ACKERMANN: Yes, that is his evidence.

ADV MOROKA: And he told this Commission why he thought it was appropriate that he should remove you as a member dealing or as the head dealing with the TRC cases.

ADV ACKERMANN: Yes, because Mr, ag Reverend Chikane complained. It was not about all the complaints by all the ministers and the ministerial committee and the directors-general. It was because Reverend Chikane complained.

10 ADV MOROKA: And that is Mr Mpshe's evidence.

ADV ACKERMANN: That is his evidence.

ADV MOROKA: Thank you, Chair.

CHAIRPERSON: Thank you, Ms Moroka. Thank you. Mr Varney?

ADV VARNEY: Chair, I see that we have been going for an hour and a half. Can we just check with Mr Ackermann if he wants a short break?

CHAIRPERSON: Mr Ackermann, would you like to take a short adjournment now or at 11 o'clock?

ADV ACKERMANN: Let us do it at 11 o'clock.

20 CHAIRPERSON: Thank you, Mr Ackermann. Yes, Mr Varney?

RE-EXAMINATION BY ADV VARNEY: Mr Ackermann, at the beginning of your cross-examination by my learned friend for the minister, various sections of the Constitution and the NPA Act were put to you or the one particular section was not put to you, which I will do so now. It is section 32(1)(b) of the NPA Act. It reads as follows.

Just to save time, I am not going to ask you to find it and I am going to read it into the record.

“Subject to the Constitution of this Act, no organ of state and no member or employee of an organ of state, nor any other person shall improperly interfere with, hinder or obstruct the Prosecuting Authority or any member thereof in the exercise, carrying out or performance of its, his or her powers, duties and functions.”

10 ADV ACKERMANN: Yes.

ADV VARNEY: You are familiar with that section?

ADV ACKERMANN: Yes.

ADV VARNEY: In your view, the actions of Minister Mabandla; do you believe that her conduct in relation to the TRC cases was inconsistent with this section?

ADV ACKERMANN: Ja, improperly to stop a prosecution is [indistinct] offence. You cannot intervene with the decisions of the national director or any prosecutor. She hindered in prosecuting the matter.

20 ADV VARNEY: And directing the acting NDPP to suspend work on the TRC cases, pending the formulation of guidelines which, as you said, resulted in the suspension at least for two years. Would that have been an improper interference with the work and discretion of the NPA?

ADV ACKERMANN: Correct.

ADV VARNEY: And I want to refer you to the evidence of former NDPP Ngcuka, his transcript at page 43, line 20. This is his evidence before this ...[intervenes]

ADV ACKERMANN: Yes, [indistinct].

ADV VARNEY: Before this Commission on 2 March 2026; and my learned friend referred you to this page during cross-examination. Perhaps just to save time, I am going to read the passages to you. “My office”; and by way of context, this was the request to the NDPP to send representatives to a meeting convened by the Director-  
10 General of the Department of Justice to look into amending the prosecution policy in so far as the TRC matters were concerned. It reads as follows:

“My office was represented then by one of my advisors, Lungisa Kosi and another guy called Gerhard Nel. Gerhard Nel’s responsibility in my office was to prepare legislation that had to go to parliament. He was specialising, he was drafting legislation. We discovered earlier on that it is important for us as the NPA, if any legislation is to  
20 be passed, that we are consulted and that we contribute to it, and so we created that capacity in my office.”

And then the next page 44:

“So Gerhard and Lungisa went to that meeting and they came back and reported to me what had

transpired in the meeting. And in their view, which I accepted, was that there was no need for us to participate in that forum and that there was no need for us to change the prosecutorial guidelines that we had, and that is it.”

Were you aware that the then NDPP, Adv Bulelani Ngcuka, declined to allow NPA representatives to be involved at that point in time in reformulating the prosecution policy in so far as it impacted the TRC cases?

10 ADV ACKERMANN: [Indistinct] did not know anything about this new amended policy. I did not know of it. It was not discussed with me.

ADV VARNEY: And it was put to you by my learned friend that, in relation to your interactions with Minister Mabandla, she put it to you that at no stage did she actually say in blunt terms ‘stop the prosecutions’ and you confirmed that was so. So I want to revisit the transcript of 6 March at page 54 and your recollection of that meeting. You stated that she indicated, and I underline the words. It was her ‘firm impression’ that there were not going to be TRC prosecutions.

20 And then when you advised her that at least one was going ahead, namely the Chikane prosecution, she asked why she had not been informed of it. You then pointed out that she had been informed previously. Now I want to put it to you that, without mincing words, although she did not say ‘stop the prosecutions’, the fact that she said that she had a firm impression that they were not going to go

ahead, what did that say to you?

ADV ACKERMANN: That somebody told her that there were not going to be prosecutions; and she believed that. And I find that very strange, because she was sitting in the parliament when the president on 15 April 2003 delivered his speech regarding TRC prosecutions, clearly stating that there will be no amnesty and the prosecutions will proceed. That is why I also think that because of the PEBCO matter, he was not interested in having reconvened an amnesty meeting, because she knew that she was of the opinion then  
10 that there were not going to be any prosecutions. I think that is the reason why the PEBCO matter never went forward.

ADV VARNEY: No further questions.

CHAIRPERSON: Thank you, Mr Varney. Mr Soni?

ADV SONI: Good morning, Mr Ackermann.

ADV ACKERMANN: Morning.

CROSS-EXAMINATION BY ADV SONI: Mr Ackermann, can I just refer to a few milestones in respect of your involvement with the TRC matters? It is correct that you were appointed as the head of the PCLU in March 2003. Is that correct?

20 ADV ACKERMANN: That is correct. Ja, that is correct.

ADV SONI: And in October 2003 the NDPP directed that the PCLU must assume responsibility for the investigation and presentation of all cases emanating from the TRC. Is that correct?

ADV ACKERMANN: It must have been somewhere in May 2003.

ADV SONI: I just want to... I do not think it matters, but just so that

the commissioners have a reference to it. I am going to refer you to Calata Group, volume 3, additional bundle 3 relating to yourself and on page 1 of that bundle there is a letter from the NDPP or a note from the NDPP, which says, it is dated 21 October 2003. It says:

10                    “In terms of the powers given to me under the  
                         Presidential Proclamation of 24 March 2003, I  
                         hereby direct that your unit assumes  
                         responsibility for the investigation and  
                         prosecution of all cases emanating from the Truth  
                         and Reconciliation Commission.”

Are you prepared to accept that, Mr Ackermann?

ADV ACKERMANN: Ja, I accept that.

ADV SONI: Then, Mr Ackermann, and you have recounted this. Soon after Mr Pikoli, Adv Pikoli was suspended in around September, or thereafter, 2007, you were relieved of your duties in relation to TRC matters. You have given evidence about that.

ADV ACKERMANN: That is correct.

20                    ADV SONI: And you did say though that although you were not in  
                         control of those matters, you did keep up to date with what was  
                         happening in those matters.

ADV ACKERMANN: That is correct. I had to manage certain concerns.

ADV SONI: And then you retired on 31 March 2013. So you are no longer and have not been with the NPA for about 13 years now. Is that correct?

ADV ACKERMANN: That is correct.

ADV SONI: Now, when you were appointed, as being indicated by those milestones I have read out to you, you actually needed to work out how to deal with TRC matters. Is that correct?

ADV ACKERMANN: If you can just repeat the question.

ADV SONI: I say you were now in charge of an important area of possible prosecutions and you needed to develop a policy in regard to how you would execute that mandate. Is that correct?

ADV ACKERMANN: No, I did not execute, I did not form a policy,  
10 but the closest we can come to a policy is when Chris Macadam wrote on 3 May, I think, or maybe even earlier, 2003. Are we going to approach these prosecutions and more of the cases that we had at that stage.

ADV SONI: Mr Ackermann, it is going to be a lot easier. I am asking specific questions. You just answer the questions. If you want to then add something to it, perhaps you could use the opportunity in re-examination, but I would just like you to focus on the questions I ask, if you do not mind, please.

ADV ACKERMANN: Ja, but I was under the impression that there  
20 was a policy drafted. There was no policy.

ADV SONI: Can I then refer you to, Mr Ackermann, a document that was submitted to Dr Ramaite, seemingly from yourself; and I say seemingly, because I understand that sometimes Mr Macadam drew up documents, but it does not matter. I just want to look at the contents of the document. It is a memo that is dated 24 October

2006 and the subject matter is “audit of cases emanating from the TRC process”. Commissioners, that appears ...[intervenes]

ADV ACKERMANN: I...

ADV SONI: Sorry, Mr Ackermann. I have not asked a question. I am just referring you to it and I am going to tell you where you find it. Commissioners, that appears as PCJ5 in the Jacobs bundle, and it is page 1723 of that bundle.

COMMISSIONER GABRIEL: Page?

10 ADV SONI: 1723. Mr Ackermann, are you able to access that document?

ADV ACKERMANN: I have it in front of me.

ADV SONI: Okay. Now, in paragraph 1, which starts at page 1723, you trace the historical background to the TRC process or cases. And I want to deal firstly with paragraph 1.9 on page 1724. Are you there?

ADV ACKERMANN: I am there.

20 ADV SONI: So having traced the historical development that took place in regard to TRC matters dealing with the D'Oliveira Commission or the D'Oliveira Unit and how the cases were divided between the DSO and the police, at paragraph 1.9 you point out that:

“No prosecutions were instituted because the TRC’s final report and the president’s response thereto were outstanding.”

ADV ACKERMANN: Yes.

ADV SONI: And that must be correct. Is that right?

ADV ACKERMANN: That is correct.

ADV SONI: Then you say in paragraph 1.10:

“With the creation of the PCLU in March 2003, the NDPP assigned all TRC matters to it after the TRC had tabled its final report, and the president had mandated the NDPP to institute prosecutions, where appropriate, arising from the TRC process.”

That is correct as well. Am I right?

10 ADV ACKERMANN: Correct.

ADV SONI: Can I just say in relation to this TRC report in relation to prosecutions, there is a passage in that report which has a bearing on the manner in which its report was to be implemented; and it is at paragraph 24 of volume 6. I am just reading to you the relevant part of that paragraph. And it is also contained in the Rodrigues report where what the commission said is:

20 “It has always been understood that where amnesty has not been applied for, it is incumbent on the present state to have a bold prosecution policy in order to avoid any suggestion of impunity or of contravening its obligations in terms of international law.”

Now that is what, I am just reading to you what that part of the commission’s report said.

ADV ACKERMANN: Yes.

ADV SONI: And in a sense, that is what the president, as you point out in 1.10, said that these cases must now be prosecuted. In other words, the TRC cases must now be prosecuted.

ADV ACKERMANN: Correct.

ADV SONI: Now, you then say at paragraph 1.11:

“The PCLU was not an investigative agency and was therefore dependent on SAPS and the DSO for investigators.”

ADV ACKERMANN: Correct.

10 ADV SONI: Now, I just, if I could comment on this. One of the themes that appears over and over again is seemingly a dispute about where the PCLU should source investigators for the TRC cases. Should it be from SAPS or should it be from the DSO?

ADV ACKERMANN: Correct.

ADV SONI: Now, one of the first matters that, one of the first issues that arises in that case seemingly is a letter; and Mr Ackermann, can I say to you I am going to read to you parts of a letter written by Commissioner de Beer? It appears at page 296 of Calata bundle 1. There is...

20 ADV ACKERMANN: [Indistinct].

ADV SONI: Sorry, are you familiar with it?

ADV ACKERMANN: Ja, I am familiar with it.

ADV SONI: Okay, I will just read it to you. You do not need to go there. It is a letter dated 26 September 2003 and it is addressed to yourself and it comes from Divisional Commissioner de Beer. As I

understand it, Mr Ackermann and I just do not want us to have disputes about what Mr de Beer's role is. Commissioner Jacobs, when he gave evidence, says that in regard to operational matters, Commissioner de Beer was the person at head office to be contacted. Are you prepared to accept that?

ADV ACKERMANN: That is correct.

ADV SONI: Now, coming back to the letter, he says to you:

“Dear Adv Ackermann, investigation of TRC cases.”

10 And he says:

“Your letter dated 20 August as well as the preceding discussion between ourselves have reference.”

And then he says at paragraph 2:

“As agreed at our meeting, I have discussed your request for the assistance of the South African Police Service to investigate cases emanating from the TRC processes with the national commissioner.”

20 That of course is commissioner, the late Commissioner Selebi. Would that be correct?

ADV ACKERMANN: Correct.

ADV SONI: And then he says:

“It is evident from your letter that the investigation and prosecution of these cases were referred to

the NDPP by the president.”

You accept that that is what the position was?

ADV ACKERMANN: That is correct.

ADV SONI: Now, he then says, and I want to emphasise this point:

“Our understanding was that this referral was politically inspired.”

That is the version or that is the approach adopted by Commissioner de Beer certainly, and I do not know whether it is the rest of the police, but that certainly was his approach, as reflected in this letter.

10 Would I be correct?

ADV ACKERMANN: That is correct. That is correct.

ADV SONI: And then he says:

“As you know, a large number of cases to be investigated are those of ex-policemen.”

And that must be correct, because numerous, in fact, countless complaints had been made about abuses during the apartheid regime by both the police and the army, but he is now dealing with the police.

Would that be correct?

ADV ACKERMANN: That is correct.

20 ADV SONI: And therefore, he says then:

“Because these involve ex-policemen, it is therefore understandable that you first endeavour to have these cases investigated by the Directorate of Special Operations.”

That is the DSO. Is that correct?

ADV ACKERMANN: You say that I, my first endeavour was to have the cases investigated by the DSO. Let me think. That sounds fair. I think it is correct.

ADV SONI: Then he goes on to say:

“From your letter, it is...

And I just want to point out as context to the rest of the letter. The point I make to you that there was a concern that the... if I could put it; the old order policemen were going to be investigating themselves. That is the context from the second paragraph of the letter. Then in

10 that context he says:

“From your letter, it is firstly not clear why the DSO do not have the legal mandate to investigate the cases emanating from the TRC; and secondly, why it was not possible to obtain a presidential proclamation to provide such mandate, if it was lacking. Your letter only states that in March 2002 consideration was given to the issue of a presidential proclamation. The problems were encountered in this regard.”

20 Chairperson, I see it is 11. May I finish this letter so we do not have an interruption of it?

CHAIRPERSON: Yes, you may.

ADV SONI: I am indebted to you, Chairperson. And Mr Ackermann, I take it that is okay with you. I will not be more than a few minutes.

ADV ACKERMANN: That is fine.

ADV SONI: And then you say, I mean then Commissioner de Beer say:

“As you are aware...”

Sorry.

“You are aware of the fact that the capacity created for the D'Oliveira Committee is presently with the DSO.”

Then he goes on to say:

“In view of the nature of the investigations...”

10 And it is obviously relating to the fact that it involves ex-policemen.

“The fact that the president had referred it to the national director and that it seems to be common cause that the initial understanding was that the DSO would have to investigate, the opinion is held that you or the national director should approach the president and confirm the instruction of the president on who he wants to investigate these matters.”

Finally he says:

20 “If the president indicates that the police should be involved in the investigation, the instruction should be obtained in writing. Upon receipt of such instruction, the South African Police Service shall of course assist and the terms of reference as well as the issues, such as logistics, number of

investigators' command can be discussed as well as other relevant issues."

Then he concludes to say:

"You are therefore requested to approach the president on the matter, whereafter we can take the matter further if necessary."

And he signs off with "kind regards". That is Commissioner de Beer's letter to you on 6 September 2003, following a request from you on 20 August 2003. Is that correct?

10 ADV ACKERMANN: That is correct.

ADV SONI: Chairperson, I want to comment on the letter, but it may take a bit of time.

CHAIRPERSON: Yes.

ADV SONI: I await your directions as to...

CHAIRPERSON: Yes, I think this would be an appropriate time to adjourn for tea and reconvene at 11:15.

ADV SONI: As you please, Chairperson.

INQUIRY ADJOURNS

INQUIRY RESUMES

20 CHAIRPERSON: Mr Soni?

ADV SONI: Thank you so much Chairperson. Now Mr Ackermann, can... Mr Ackermann are you there?

ADV ACKERMANN: I am here.

ADV SONI: Yes. Mr Ackermann, can I just make a point, a point that emerges from Commissioner De Beer's letter. What is quite clear is

that the police appear to express a reluctance to investigate their own, if I can put it that way. Would that be a fair reflection of what Commissioner De Beer says?

ADV ACKERMANN: Can you just repeat that? That they?

ADV SONI: The police expressed a reluctance to investigate their own.

COMMISSIONER KGOMO: It appears, yes.

ADV ACKERMANN: Yes, that is correct.

10 ADV SONI: That, I say, is one of the things that appears to emerge from this letter.

ADV ACKERMANN: Yes, I agree with it. Perhaps just the perception. That they are.

ADV SONI: Well, I am only telling you what the letter says. We do not know what (intervenes).

ADV ACKERMANN: Yes, no, I agree. I agree.

ADV SONI: One of the themes is, if you want to investigate the alleged perpetrators of human rights violations by the apartheid state, ask the DSO to do so.

ADV ACKERMANN: Yes.

20 ADV SONI: Now, can I then ask you, Mr Ackermann, do you have Bundle 18, which contains the statement that Advocate Ledwaba made to the, made in preparation for his evidence to the Commission earlier this week? Do you have that with you?

ADV ACKERMANN: No, Mr Venter will look for me.

ADV SONI: When you do, please let me know.

ADV ACKERMANN: I have it.

ADV SONI: Now, can I ask you, before I go to the statement itself, Mr Ledwaba was the director in the DSO, is that right?

ADV ACKERMANN: That is correct.

ADV SONI: And if investigators were to be sourced from the DSO, it would be through Mr Ledwaba.

ADV ACKERMANN: That is correct.

ADV SONI: Now, in paragraph 61 of his statement, he says:

10                    “In May 2003, Advocate Macadam, in his capacity  
                      as deputy director in the PCLU, filed applications  
                      at my office requesting that I declare certain TRC  
                      cases as projects under section 21(a) of the NPA  
                      Act 28, subsection 1(a) of the NPA Act, in order for  
                      TRC cases to be investigated for the DSO.”

ADV ACKERMANN: That is correct.

20                    ADV SONI: Okay. And his response to you, and I am just, we do not  
                      have to go into this in detail, his response is that such a request fell  
                      outside his mandate, and that if you wanted to source investigators  
                      from the DSO, you needed to do it via section 28(1)(b) of the NPA  
                      Act. That was his response. Is that correct?

ADV ACKERMANN: That is what he says.

ADV SONI: Yes, no, I understand. And I know you disagree with him, but I am just trying to reflect on the developments that took place. Then, in paragraph 63, he says:

                      “On 15 July 2003, yourself and Mr Macadam held

a meeting where a similar request was made that he utilise his powers under section 28(1)(a) of the NPA Act.”

Is that correct?

ADV ACKERMANN: Does that say, are you reading from paragraph 63?

ADV SONI: 63, yes.

ADV ACKERMANN: But there is nothing about which section he is using.

10 ADV SONI: Could it be any other section, Mr Ackermann?

ADV ACKERMANN: Section 28(1)(b)?

ADV SONI: It is not the NDPP, Mr Ackermann, let us take this seriously, please.

ADV ACKERMANN: I take an exception to that.

ADV SONI: Mr Ackermann, can I then say to you that at paragraph 64, he says to you and Mr Macadam that he is unable to assist?

ADV ACKERMANN: Yes.

ADV SONI: Okay. Then he goes on at paragraph 68 to say,

20 “It is unfortunate that Mr Ackermann and, Advocates Ackermann and Macadam did not follow my advice.

Then he says:

“in December 2003, however, it appears that the penny finally dropped and they did approach the NDPP, that was then Mr Ngcuka, in terms of

section 28(1)(b). “

That did happen, is that correct?

ADV ACKERMANN: I disagree with what he is saying. At no stage did he have any objection about which section we were using. He took, said he is not going to investigate any TRC matter. If I may have a look at my memo, 11 November 2003, at no stage did he say he is not investigating because the wrong section is used. And Mr Macadam will be able to give evidence on that. As I know Macadam, being a very competent advocate, he will know exactly  
10 how it is done.

So the point I am making at no stage was he, tell us he is not investigating because we are not using the correct section.

ADV SONI: I understand perfectly. Can I just put the dispute in context then? Your dispute is not that you did not approach him. Your dispute is not that you... that he said he could not help. Your dispute is he said he will not help. Is that correct?

ADV ACKERMANN: That is correct.

ADV SONI: Okay. But let us then just go on to what happens next. He says, and I want to take us to paragraph 78. And mindful of the  
20 dispute you raised with what Advocate Ledwaba says. He says at paragraph 28, the NDPP, this is the second sentence in paragraph 78:

“The NDPP approved a request made to him and signed a directive instructing Mr Ledwaba to authorise the four matters in terms of section

28(1)(b) on 24 February 2004.”

Now, is it correct that Advocate Ngcuka did authorise the use of section 28(1)(b)?”

ADV ACKERMANN: Yes, I think what happened is that we forced Ledwaba now to investigate. But Chris Macadam will be able to give evidence on that point. I am not ofé accounts, I cannot recall precisely why we used 28(1)(b) at a later stage.

ADV SONI: Mr Advocate Ackermann, I do not intend to be short, but I do want to say, I am simply trying to get to the thrust of the matter.

10 And the only question is, did Advocate Ngcuka authorise the investigations?

ADV ACKERMANN: Yes, I know there was authorisation.

ADV SONI: Okay. Now, can I ask you to look to the second last page of that bundle? And it is page 1745. You will see there, there is an internal memorandum addressed to Mr Ledwaba in his capacity as Head of Operations of DSO. And it is dated 8 December 2003. It emanates from the NDPP. And he says on the subject, Investigation of TRC cases by the DSO. He says:

20 “I have decided in terms of section 28(1)(b) of the NPA Act that the following three cases arising from the TRC be investigated by the DSO.”

But he goes on to mention four cases. And you accept that those are the four cases that were authorise to be investigated by the DSO?

ADV ACKERMANN: That is correct.

ADV SONI: And this authorisation was signed by Advocate Ledwaba on 24 February 2004?

ADV ACKERMANN: Yes.

ADV SONI: Right, so you were granted DSO investigators in terms of this?

ADV ACKERMANN: That is correct.

ADV SONI: Then can I go back then to paragraph 79, or not back to, but go to the affidavit and now refer to paragraph 79 of the affidavit. This is the fact that Advocate Ngcuka had authorised a further three  
10 matters to be investigated by the DSO. And Advocate Ledwaba said that he complied with a directive by the NDPP, and allowed another, sorry, sorry, I am, I am. He then allowed, at page 81, a further three matters to be investigated by the DSO. You see that?

ADV ACKERMANN: Is that paragraph 81?

ADV SONI: Paragraph 81. That on a further request by the PCLU, three further matters were authorised.

ADV ACKERMANN: Yes, I see that.

ADV SONI: And if you turn to the last page of that bundle, you will see that the three, sorry, it is two further matters. And they are  
20 named in MGL5, which is the last page of that bundle. And that is, again, from the office of the NDPP to Mr Ledwaba, saying that he is decided to refer the following matters to the DSO for investigation. And the two matters are the APLA attacks on the St James Church and the Heidelberg Tavern situated in Cape Town. You see that?

ADV ACKERMANN: I see that.

ADV SONI: Right. So we know now that there were six matters that were authorised by the NDPP to be authorised, to be investigated by the DSO.

ADV ACKERMANN: That is correct..

ADV SONI: Now, can I just ask you, you made an affidavit and it is been referred to on several occasions. On the last occasion by my learned friend Ms Moroka this morning, where reference was made to the affidavit you filed in the Nkadimeng 2 matter in 2015. Do you remember that?

10 ADV ACKERMANN: Yes.

ADV SONI: Now, can I ask you, in that matter, you indicate at paragraph 16, and we are now talking about 2015, you say at paragraph 16 where you indicate that the progress of cases has not been good in respect of TRC matters. Then you say, identifying the matters that were investigations or the cases that have been finalised, you say in relation to post-TRC prosecutions conducted by the PCLU, only the following cases have been instituted:

20 The cases are State v Terre Blanche, State v Blani and State v Nieuwoudt. And just to put it in context, that is the case involving the PEBCO 3, would that be correct?

ADV ACKERMANN: That is correct.

ADV SONI: Then you see that you describe at paragraph 16.1 what happened in the Terre Blanche matter and you say that in 2003 the former leader of the AWB, who had been charged with various acts of terrorism during the 1990s, entered into the plea agreement with the

PCLU in terms of section 105(a) of the Criminal Procedure Act. And that is what happened, is that correct?

ADV ACKERMANN: That is correct.

ADV SONI: That is one of the cases you referred to as having been finalised by the PCLU?

ADV ACKERMANN: That is correct.

ADV SONI: And then in paragraph 16.2, dealing with the Blani matter, you point out that Mr Blani, an ANC member who had been implicated in the mob killing of two persons, had not applied for  
10 amnesty. The matter was fully investigated. He was arrested and then thereafter a plea and sentence agreement was concluded and he was convicted on all charges and sentenced to five years imprisonment, four of which was suspended for five years. And that happened as well?

ADV ACKERMANN: That is correct..

ADV SONI: That too was in terms of section 105(a) of the Criminal Procedure Act.

ADV ACKERMANN: That is correct.

ADV SONI: And then you deal with the PEBCO 3 matter and you  
20 indicate the difficulties that arose in that matter and it had to do with the fact that the Department of Justice had not provided for legal representations for the person's concerned, or had not paid for the legal representations, and therefore the amnesty or the review of the refusal of amnesty could not be concluded. So that matter was not concluded at that stage. Is that correct?

ADV ACKERMANN: That is correct.

ADV SONI: Okay. Now one of the matters that you do not mention in this case is the matter of State versus van der Merwe and Vlok and the three foot soldiers who were involved in the attempted murder of Reverend Chikane. But that matter had also been concluded by the time this affidavit was done. Am I correct?

ADV ACKERMANN: Yes. I see what you are getting at, but... did not.

10 ADV SONI: Mr Ackermann, I am just trying to complete the picture so that... (intervenes)

ADV ACKERMANN: Yes.

ADV SONI: And really, with respect, I am not getting to anything. I am just trying to paint a picture for the position at 2015 in relation to TRC cases.

ADV ACKERMANN: You know, paragraph 15 says during 2004 and 2005, we identified 16 cases.

ADV SONI: No, I am talking about...(intervenes)

COMMISSIONER KGOMO: I thought maybe you must just repeat the question to him.

20 ADV SONI: Yes. Mr Ackermann, I am just trying to deal with the cases that were completed by the PCLU as at the time you had made your affidavit in Nkadimeng 2 in 2015.

ADV ACKERMANN: Look, if you say... the Nkadimeng matter was obviously done. I do not know why I, you refer that this was the stage at 2015. You know, I mean, the cases I referred to, like Eugene Terre

Blanche or Blani and Nieuwoudt cases, they are, I think, even before the guidelines were drafted. I am not so sure that I refer here to after 2015. I am not sure why, I do not mention Chikane here, perhaps you can tell me what is the point you would like to make.

ADV SONI: Now, I am just... Mr Ackermann, if you do not see a lion behind the bush, there is no lion. I am saying this to you, that I am just trying to work out and present to the Commission what the state of play was in respect of TRC matters at the time you signed this affidavit, according to this affidavit, and I am just saying that when  
10 one looks at the picture as a whole, added to those three cases, it is obviously the case of the Chikane accused.

ADV VARNEY: Commissioners, I do not wish to interfere with the cross. But just to save time, my learned friend suggests that the witness did not mention the Chikane case in his statement. In fact, in paragraph 17, the very next paragraph, he does refer to the Chikane statement. I hope that is the Chikane case.

CHAIRPERSON: Mr Soni?

ADV SONI: My learned friend must know that what is referred to in paragraph 17 is the fact that there was this alleged interference. It  
20 does not refer to the completed case. My learned friend must know that, Chairperson..

CHAIRPERSON: Yes. Mr Ackermann?

ADV ACKERMANN: Yes?

CHAIRPERSON: You may respond to the question.

ADV ACKERMANN: Well, I see now, in paragraph 17, I mentioned

the Chikane matter. I do not, I will have to read through it and I do not know whether I deal with the plea-bargain and the conviction of the three, of the five people. If it is mentioned in my affidavit, that is another case that were disposed of. That was not a case that we disposed of. forms and the conviction of the three, of the five people.

ADV SONI: And that is the reason I wanted to give this complete a picture to the Commission and to you as to what the state of play was. And may I come back to this point then. So as at 2015, on the basis that four cases were completed, you had been in charge of the  
10 PCLU by that stage, at different levels if not in charge, then certainly playing a role in the PCLU. In the period of ten years, four cases had been done, had been finalised.

ADV ACKERMANN: Yeah. Prosecutions.

ADV SONI: Yes. Do you accept that?

ADV ACKERMANN: And there were many dockets that were closed and decided on of the hundreds. Those are the prosecutions.

ADV SONI: Yes. No, no, no, I understand. I am just trying to say that effectively that is the list of cases that were completed by your unit.

20 ADV ACKERMANN: Well, before I say in my affidavit in 2015, I accept and I left a lot of things out because I was not in possession of all my documents. Later on, Macadam sourced some documents that I saw, documents that I did not even know existed, letters that I have written. You know, on paper it looks like those are the only four cases that Macadam can rectify if I am wrong.

ADV SONI: No, of course. And I am saying to you that is particularly why I mentioned the Van der Merwe case. Because I wanted to, in a sense, add to the picture you had painted because it appeared incomplete.

But let us get past that point. I want to say to you on any basis where there had been thousands of violations of human rights by the state during the period that the TRC was required to investigate, on that basis, this is, and I will put it in neutral terms as described by your counsel on different occasions, this record is  
10 dismal. Would you agree with that?

ADV ACKERMANN: Yes.

ADV SONI: Now, can I just ask you... (intervenes)

ADV ACKERMANN: But I am not the cause of it.

ADV SONI: No, no, no.

CHAIRPERSON: Mr Ackermann, just keep to the question that has been put to you in your response.

ADV SONI: Thank you Chairperson. Now, I just want to go back to your, because, and I want to be fair to you, and I would always intended doing this, Mr Ackermann. You referred to other matters,  
20 and these other matters are referred to in PCJ5. This is the document I referred you to earlier this morning, which is the historical background to your audit of TRC cases as at 2006. That is when the document is dated.

ADV ACKERMANN: I am familiar with that document.

ADV SONI: Right. Now, in this matter, you say at paragraph 1.14,

you say:

“The PCLU conducted an audit of all the cases in both offices.”

And remember, the two offices are yourself having taken over Advocate Fick’s cases and the cases that Macadam took over from the DSO. Those are the two offices you are talking about. Is that right?

ADV ACKERMANN: Yes.

ADV SONI: You see that at paragraph 1.13.

10 ADV ACKERMANN: That I can see, yes.

ADV SONI: Then you say at paragraph 1.16, during 2003/2004, Advocate Ackermann declined to prosecute plus minus 80 of the above-mentioned cases. Oh, sorry, I forgot to point out that in paragraph 1.15, the memo says:

“In this auditing process, it was established the police officers at Fick’s office at the DPP Pretoria had registered 395 police dockets.”

That figure is about right?

ADV ACKERMANN: You want me to answer? Yes.

20 ADV SONI: Okay. And then it says that you declined to prosecute in plus minus 80 of the cases.

ADV ACKERMANN: Yes.

ADV SONI: And then it says similarly, plus minus 50 cases from the DSO were finalised by Mr Macadam and Mr Ackermann.

ADV ACKERMANN: Correct.

ADV SONI: And then you say at paragraph 1.18:

The audit process further identified a small number of cases warranting prosecution which adhered to it here under.”

ADV ACKERMANN: Yes.

ADV SONI: Okay. Now, then you categorise the cases into three broad groups. The first group which is dealt with at paragraph 2 deals with the cases that were finalised in court.

ADV ACKERMANN: Correct.

10 ADV SONI: And you deal with four cases there.

ADV ACKERMANN: Correct.

ADV SONI: Two of the cases are those that were mentioned in your affidavit and then there are two cases which were dealt with by Advocate Mhaga. Am I right?

ADV ACKERMANN: That is correct.

ADV SONI: Okay. And then you, in the second category, you deal with the cases that were closed by the PCLU and I count them to be 26 cases. Will you accept that for now?

ADV ACKERMANN: I will accept that.

20 ADV SONI: And then, Mr Ackermann, this is the point you were making when we were dealing with your affidavit. If you look at page 1729 at paragraph 4, you identify a number of potential prosecutions that the PCLU had identified and these total 22. Will you accept that?

ADV ACKERMANN: Yes., I accept that.

ADV SONI: Mr Ackermann, I am only for the time being interested in

the first two categories. Now, in regard to the first category, we know that you dealt with it in your affidavit in the Nkadibeng matter and we now know that in addition to the four cases there, there are the two cases that Mr Mhaga dealt with, so that is a total of six cases in all.

ADV ACKERMANN: Yes.

ADV SONI: Now, can I then ask you to go back to paragraph, the main paragraph 3, which were the matters that were closed by the PCLU and I said I would come back to that. I have said to you there are 26 cases there.

10 ADV ACKERMANN: Yeah.

ADV SONI: Just in relation to this, as I understand it, this is a report that was presented to the task team and they asked for more details in regard to these 26 cases. Would that be correct?

ADV ACKERMANN: I cannot recall it, but if you say that, they did ask for, you know, I am not sure in. I cannot hear.

ADV SONI: Okay. Mr Ackermann, can I ask you to go to PCJ7 at page 1737, please?

ADV ACKERMANN: Yes.

20 ADV SONI: So, you remember that we were dealing with paragraph 3 on the previous memo, which were matters closed by the PCLU, and you will see that this is a memo prepared by yourself, addressed to Dr Ramaite and the UCC, the NDPP, and Advocate Kalyani Pillay, and you then say that these are the details of the TRC cases closed by the PCLU. And in the first paragraph, you say:

“On 25 October 2006, the PCLU was requested by the TRC

Committee to furnish more details regarding all the cases which the PCLU had declined to prosecute. The PCLU was also requested to furnish the background to the prosecution of one Blani.”

ADV ACKERMANN: Correct.

ADV SONI: And that is what this addresses, am I right?

ADV ACKERMANN: What this? Sorry I... (intervenes)

ADV SONI: That is what this memo addresses. In other words, it is revisiting paragraph 2 of your previous memo.

ADV ACKERMANN: Yes, okay, I just, I do not know if it is important,  
10 I, of course, did not compile this list, the letters to October, I mean 24  
October 2006 and 30 October 2006. I think Mr Mhaga said that he  
compiled this list. He wrote the report.

ADV SONI: Okay, but can we accept that what is contained in here is correct, because you then submitted it to the NDPP?

ADV ACKERMANN: As far as he checked each and every case, I did not sit and go to each case and see what the position is.

ADV SONI: Okay. I just want to, in regard to this, and I see the qualification you make, but in regard to this, there are three cases that I want to look at in particular.

20 ADV ACKERMANN: I will do that.

ADV SONI: Firstly, before I get to those three cases, who made the decision that these cases, the 26 cases itemised in paragraph 2, should be closed?

ADV ACKERMANN: Yeah, I can tell you about the Timol case, but I have to go back, I just want to see the previous matter, Mhaga put the

names of each person and dealt with it. You can assist me. Do you want me to start with the Timol case?

ADV SONI: No, no, no, Mr Ackermann, let me ask the question, then you can... I say that my question, my first question to you before I go to any particular case is this. Who took the decisions in respect of closing these cases? Were there different people involved?

ADV ACKERMANN: That is correct.

ADV SONI: Okay. So, paragraph 1.16 of your memo of the 24th says, and that is the reason the questions have been posed in this way, says:

“During 2003/2004, Ackermann declined to prosecute plus minus 80 of the abovementioned cases.”

So, it must then be that you and other persons from the PCLU had made that decision.

ADV ACKERMANN: No, regarding the 80 cases, I am the only person who made the decision, I think. These 80 cases are the cases reflected in paragraph 1.15, that Brits then brought to me. So, it is part of the 395, and was within the DPPs office at a later stage in the Police’s office. And those are the cases reflected on those notes that I have written in each case, I have written a note, putting it in the docket.

ADV SONI: You wrote as to why you had decided not to prosecute in those matters?

ADV ACKERMANN: That is correct.

ADV SONI: Yes. Okay. Then can I ask you, paragraph 1.17 says:

Similarly, plus minus 50 cases from the DSO were finalised by Macadam and Ackermann.

Are these 26 cases that are referred to, do they fall into that category of 50?

ADV ACKERMANN: I assume so.

ADV SONI: Okay. Then can I ask you then to go back to paragraph, to PCJ7 and page 1737. The first case is the Timol case. Who made the decision to close this case?

- 10 ADV ACKERMANN: I think, and I speculate now what happened, is that Mhaga has got the job now to see what happened to all the cases. He then probably went to the docket or asked my secretary, and he went through our correspondence, and he saw that Chris Macadam wrote a query to have certain matters investigated, and he received a reply to it, and that must have been now in 2006, that no further investigations are expected. So, if you ask me, I will take responsibility because I signed this docket, but I certainly know nothing about the Timol case, so you can rule me out except that my signature is on this report, and I take responsibility for that statement,
- 20 but I did not make that decision.

I read somewhere that Macadam made a point of it, that he did not close the case because his name is not there. So, and I accept that then that he did not close that case. I do not know why the case is there in other PRC closed cases, but what I have read in the newspapers, during 2017 and 16, that the evidence that came to

light was only discovered in 2017 or 18, but at that stage when we had the docket, and I am just speaking on behalf of Mhaga or Macadam, that there was no other evidence to investigate this matter, and Macadam will be able, and Mhaga, to tell us what the position is regarding Timol.

ADV SONI: Mr Advocate Ackermann, I just want to say, the question was, did you take this decision?

ADV ACKERMANN: No.

ADV SONI: Okay. I want you to go next to the Dead in Detention of  
10 Mr Steve Biko, and you will see there that this is one of the cases... I beg your pardon?

COMMISSIONER KGOMO: You need to speak up a bit.

ADV SONI: Sorry, Commissioner. You will see there that this is a matter that was also closed. Did you take this decision?

ADV ACKERMANN: No.

ADV SONI: Can I ask you to then go to page 1742B of that document.

ADV ACKERMANN: Say again?

ADV SONI: 1742B of the document. There were four pages that was  
20 added to the original document that was presented by Commissioner Jacobs.

ADV ACKERMANN: Yes, I am listening. I want to... I am not...  
(intervenes)

ADV SONI: Sorry, do you have 1742B?

ADV ACKERMANN: Yes, I have it in front of me. There is a little

print there, once. Yes?

ADV SONI: Okay. Can I ask you to look at paragraph 2.23 of this document?

ADV ACKERMANN: Yes.

ADV SONI: Now, this is the refusal of amnesty to the President and other high-ranking officials.

ADV ACKERMANN: Yes.

ADV SONI: Who took this decision?

10 ADV ACKERMANN: I took it and Chris at a later stage wrote an opinion about it.

ADV SONI: So, in regard to... (intervenes)

ADV ACKERMANN: We were both equal.

ADV SONI: Okay. But you have personal knowledge of the basis on which it was closed.

ADV ACKERMANN: That is correct.

ADV SONI: Okay. So, this is what is said in this document:

20 "The TRC refused amnesty to the President and plus-minus 37 other high-ranking ANC members, certain of whom held ministerial positions or other key positions in government.

2. The TRC found that they had not disclosed that they had committed specified crimes.

3. There was no evidence implicating them in criminal offences and the file was closed.

4. The NDPP, Mr Ngcuka, made a media

statement to this effect as the DA was making an issue of the matter.”

ADV ACKERMANN: Yes.

ADV SONI: That is what is contained in here. I just have a couple of questions for you, Mr Ackermann. Firstly, we know no amnesty was granted to this category or this group of applicants.

ADV ACKERMANN: That is correct..

ADV SONI: Secondly, you say that there was no evidence implicating them in criminal offences and therefore the file was closed.

10 ADV ACKERMANN: That is correct.

ADV SONI: Can I ask you, what investigations were done to come to that conclusion?

ADV ACKERMANN: Let me think. I had this docket and you saw the note that I have written. What happened before that is Brits brought me the docket. I read it and I saw it is the landmines, most of the docket consisted of how there was an explosion and people were killed. And types of mines and it was, I think that all the documents that was filed at the inquest. So it is actually an inquest that we had, I think.

20 Then, I had a discussion with the investigating officers and that was Brits and Nel. And I said to them, why do we have it? They said to me, they have this judgement of the TRC where they admitted that it was the landmine campaign, they were connected to it. And I told them that that evidence is inadmissible. Took me a long time to explain to them. He said, yes, but they admitted. I said, it is

inadmissible, sir. Take it out of the docket. It is not evidence.

Now, what do we have? At some stage, you know, it must be a month or two, they said, yes, but the Foundation for Equality, before the law, General Van der Merwe, they have a docket and it proves the crimes. So, well, get the docket.

And in our time, he said, in fact, Leask went to General Van der Merwe and asked him for the docket. They never gave the docket to Leask, so we were back to square one. I said to the policeman, now, we must get some evidence. And what I am  
10 interested in, I think Wagenaar told me that they had, in the docket all the minutes, the agenda, who was present at these meetings in Lusaka, and I then conveyed it to Brits and Nel. Will you able to get me this information that I need? Because in the back of my mind, I know I can, of course, apply for legal assistance, mutual legal assistance, but there is no chance that they will, with mutual legal assistance request, get those, obtain those minutes.

I think they brought me some newspaper clipping, I do not know, maybe some Sechaba's or what, I said, listen, this is not enough. We must investigate it. And at the time they said, yes, but  
20 General Van der Merwe has the docket, and I do not have to explain to you what happened between me and Wagenaar regarding this docket, and Afriforum, everybody talks about this docket. I have never seen that docket, and therefore I have no evidence. If you ask me, that is it. You know. Is there anything more that you want.?

ADV SONI: Can I ask you, were warning statements, for example,

taken from the 39 persons who were allegedly implicated?

ADV ACKERMANN: No. There is no evidence against them.

ADV SONI: And that is on the basis of what you have just said. That is the nature of the enquiries that were made. That is the nature of the investigations that were done.

ADV ACKERMANN: Yes. You know, I was waiting of course, that they were going to be prosecuted, they said they were going to privately prosecute the President and all these people, and there were these threats over a period of years, and I was waiting. As soon  
10 as they applied for the private prosecution, I will tell, show me the case that you have, and they obliged to give me the docket, and then I can peruse it, and I can see if there is evidence.

I was at all the relevant times of the view, and I am still is, they are bluffing. Even senior council that said there is a case, I do not believe it. Because happening and they had this case..

ADV SONI: Now, can I then, do we accept that that is effectively the nature of the enquiries, investigations that was done in respect of this matter?

ADV ACKERMANN: Yes, as far as I can recall.

20 ADV SONI: And I take it, given the fact that it was an important case, you would remember all the important matters arising from this case.

ADV ACKERMANN: Also, I will remember it. You can test me. I do state also that there is a, on the law, Chris Macadam wrote a long opinion why he cannot open an investigation. And, you know, I know there was an opinion, and it was given to Mr Ngcuka.

ADV SONI: But at the end of the day, Mr Ackermann, the long and short of it is you made the decision.

ADV ACKERMANN: I may. You know, I read somewhere that Chris Macadam said he made the decision, but I take responsibility, full responsibility for that decision.

ADV SONI: Now, let us leave that aside. We know the number of cases that were prosecuted, as certainly at 2015, and that is, I am just taking it to the extent of your knowledge, and we know the cases that were closed during your time, or certainly the cases that were  
10 closed in 2007, or 2006, are listed in PCJ5.

Now, can I ask you this? One of the issues that arose, and I raised that with you earlier, was the fact that you needed investigators, and you had approached Commissioner De Beer, and he had given you, he had refused, in a sense, and then you approached Mr Ngcuka, and DSO investigators were provided for those six cases. Is that correct?

ADV ACKERMANN: That is correct.

ADV SONI: Did you make any further applications to the NDPP for DSO investigators?

20 ADV ACKERMANN: No. Because there were no investigators, I cannot even recall if we requested for the six cases who were investigated by the DSO. Perhaps you can refresh my memory, who were these six investigating officers, investigating those six cases that Mr Ngcuka applied for?

ADV SONI: Mr Ackermann, you know that you would have said this

to many witnesses. It is my task to ask questions and yours to answer the questions, and you know that.

ADV ACKERMANN: Well, that is in a court of law. But we have a Commission that would lead to obtain evidence of what happened, but you say it is, saying the rules is in a court of law, I will, I know the rules, and I will stick to it.

ADV SONI: I would just rather, while I am questioning you, we did stick to those rules. Now, just coming back to the investigators that you asked for, in addition, so you did not ask for any further  
10 investigators after Mr Ngcuka had given you the investigators for those six matters?

ADV ACKERMANN: No, because I think I did not have investigators for the first six.

ADV SONI: So, are you saying that you made application to the NDPP, the director, the head of the directorate appoints the investigators, and you say that the investigators were not appointed?

ADV ACKERMANN: I do not recall who, even if investigators were appointed, because I can assure you in the Chikane matter there was no investigator.

20 ADV SONI: Advocate Ackermann, can I ask you, you say that you made a request to the head of the office for investigators, because your unit was tasked with investigating TRC matters. You are given a document which says these investigators are provided to you, and you say that the investigators were not provided. Is that your evidence now?

ADV ACKERMANN: As far as I can recall, because I had no investigator in the Chikane matter.

ADV SONI: Mr Ackermann, you've heard my question. Are you saying that no investigators were appointed, notwithstanding that you had a document saying that, in respect of these six matters, investigators would be appointed?

ADV ACKERMANN: As far as I recall, no investigators were appointed, but as I say, you know, I trust with Mr Macadam's evidence. I cannot recall that investigators were appointed. But  
10 Mr Macadams will be able, he is got an excellent memory.

ADV SONI: Now, can I... and we know as a matter of fact that you did not ask for more investigators?

ADV ACKERMANN: In relation to which case?

ADV SONI: No, in relation to any other matters.

ADV ACKERMANN: No, we only asked for the six. I think because investigators were not appointed for those six matters, it served no purpose to acquire or ask for investigators in 26 other matters.

ADV SONI: Now, Mr Ackermann, that brings me to this point. Did you tell the NDPP, look, I have asked for these investigators. I have  
20 a duty in terms of the responsibilities you have placed on me to investigate these TRC matters. You have told me these investigators will be appointed. They have not been appointed. Please do something about it. Did you do that?

ADV ACKERMANN: No, Mr Ngcuka gave evidence to the effect that he is not bothered with these things. Dr Ramaiti and the McCarthy,

must sort these matters out..

ADV SONI: No, Mr ... (intervenes)

CHAIRPERSON: That is not the question, Advocate Ackermann. Did you go back to the NDPP?

ADV ACKERMANN: No. No. I went back to Ramaiti.

ADV SONI: And you told him that this difficulty existed.

ADV ACKERMANN: He is aware of that.

CHAIRPERSON: Did you tell him? That is the question.

ADV ACKERMANN: More than once.

10 ADV SONI: And what was his response?

ADV ACKERMANN: Thinking back, he once said, well yeah.

ADV SONI: So he was indifferent to your difficulty?

ADV ACKERMANN: Everybody was.

ADV SONI: Was it not then the time to go to Mr Ngcuka and say, because the difficulty, as I understood the matter that Mr Ngcuka testified on, was the dispute between whether it should be the DSO or the SAPS, that had nothing to do with the DSO not providing, having been authorised by, or directed by him to provide the investigators?

20 ADV ACKERMANN: He is aware of the problem and he told me of him, he gave evidence to that effect, he asked McCarthy and Ramaiti to sort it out. He knows (indistinct).

ADV SONI: So effectively, as I understand your evidence, Advocate Ackermann, everybody in the NDPP was aware that a directive issued by, oh sorry, everybody in the NPA was aware that a directive issued by the NDPP was not being complied with, was therefore delaying the

processing of TRC investigations and prosecutions, and nobody did anything about it. That is the thrust of your evidence?

ADV ACKERMANN: No. Only the PCLU was aware of it, Mr Ngcuka was aware of it, Mr McCarthy was aware of it, who else? I did not go to the Commercial Crime persons, there were lots of people, so the whole NPA was not aware of it. But I must say, Macadam and I told everybody that we saw is, that we do not have investigators. I mean, you can just look at all the documents that you have on this matter. I am now talking about Parliament submitting, we are submitting posh  
10 to Parliament. We are successful here, because ... (intervenes)

COMMISSIONER KGOMO: Mr Ackermann, Mr Ackermann, the upshot of all these problems is that the investigation and prosecution of these cases were delayed.

ADV ACKERMANN: That is correct.

ADV SONI: And on your version today, this is due to the fact that, or partly due to the fact that a directive issued by the NDPP to provide investigators was not complied with?

ADV ACKERMANN: Correct.

ADV SONI: Throughout your period at the PCLU?

20 ADV ACKERMANN: Correct. I mean, up until 2007, so it is not the whole period, 2007, I did not do any operational matters. I had concerns when I, you saw those letters where I had a meeting with Ramaite, it must have been in 2008, I was then off for a year, but I had concerns about the PEBCO matter, I had concerns about matters not being followed up.

I, you know, I cannot recall what I stated in that letter, but that was a managerial job I had, to tell them that I think Macadam was now being in charge of these cases, so that if something happens, oh now I suddenly realise. Macadam at some stage said he is in contact with Commissioner Lalla and Lebea and they said they will investigate. But nothing happened. Mr Macadam can tell you all the steps he took to obtain and to get investigators during the period 2008-2010. There are documents, I did not go through these documents, but I saw there is a trail of emails that Macadam sent to  
10 these commissioners and to Ramaiti, it is all, I have not read it, it is before the Commission.

ADV SONI: Mr Ackermann, I must please implore you, please answer the questions I ask, and only those. Now, I am coming back to...

ADV ACKERMANN: Because the others does not shoot you.

ADV SONI: No, Mr Ackermann There are rules of engagement, you know the rules of engagement. I am raising with you a particular matter, that matter is this: One of your complaints was that you do not have investigators. You go to De Beer, Commissioner De Beer,  
20 he says go to the DSO, you go to the DSO or you go to the NDPP and he gives you, or authorises that to be done. If you were keen on prosecutions, you would have ensured that those investigators were made available and if they were not made available, you would take steps to ensure that that authority was complied with.

ADV ACKERMANN: After this long question, I was keen to prosecute

in TRC matters.

ADV SONI: That is your answer?

ADV ACKERMANN: Yes. Except if you dispute it, I can carry on.

ADV SONI: Mr Ackermann, can I ask you, in respect of DSO or the DSO not providing the investigators that had been promised, is there any written complaint that you made, you yourself?

ADV ACKERMANN: What complaint? What investigators?

ADV SONI: Mr Macadam, I mean Mr Ackermann... (intervenes).

CHAIRPERSON: Any written complaint, Advocate Ackermann, that  
10 you addressed in respect of the non-compliance with the directive by  
the NDPP?

ADV ACKERMANN: I cannot remember now. There might be some documents.

ADV SONI: All right. But there is no evidence to that effect. Let me then, because we know and we have been on this topic for about 15 minutes and we know that DSO investigators had been authorised to assist. You now say, for the first time, that they did not assist and nothing was done about it. So let us leave that aside for the moment. I want to go to something else. At the interdepartmental task team,  
20 there were issues now about the police assisting in these matters. Do you remember that?

ADV ACKERMANN: Yes, they said they will assist us. Jacobs said so, I think in fact he said he has written, there is faxes were sent, and he will assist us.

ADV SONI: All right. Now, were those offers that he made, and if I

can just refer you to the letters, or the letters that he had drafted for Commissioner De Beer, were those offers taken up?

ADV ACKERMANN: Where are these papers. May I have a look at them?

ADV SONI: Yes. I will just show them to you in a moment. If you look at PC17, you will see a letter that he wrote to Commissioner De Beer. This is Commissioner Jacobs wrote to De Beer saying, please, we need investigators for the following matters. Are you there?

10 ADV ACKERMANN: Yes, I see it.

ADV SONI: Okay. And that issue was discussed at the interdepartmental task team meeting. And then if you go to PCJ18, the Provincial Commissioners were asked to provide investigators for specific cases. Did the PCLU take up these offers?

ADV ACKERMANN: Of course. We were looking for investigators if you want, I did not write a letter back stating, oh, thank you very much for all these investigators. What do you expect me to do? They offered these investigators. I do not know if they were appointed.

20 ADV SONI: But so the offer was made, and as I understand it, that was your request, that we want investigators. I am just trying to work out, what is it that stopped these investigations?

ADV ACKERMANN: I think it is Commissioner Selebi.

ADV SONI: And so all of these letters that went out to the different Provincial Commissioners, you say, were of no consequence?

ADV ACKERMANN: Perhaps Jacobs will be able to give evidence on

that. I do not think they were appointed. You know, It is not that I made offers to them, it is my duty to investigate.

ADV SONI: Mr Ackermann, just like it was your duty to prosecute, am I right?

ADV ACKERMANN: Yes.

ADV SONI: Now, in order to ensure that those prosecutions could come to finality, investigators had to be appointed.

ADV ACKERMANN: That is the crux of the matter.

10 ADV SONI: Yes. And I am saying to you, on the evidence that was presented by Mr Jacobs, that is what happened.

ADV ACKERMANN: Did he appoint all these investigators. I was not aware of that. Must have missed it somewhere.

ADV SONI: Did you not pursue this matter, Mr Ackermann, you were told that there is task team meetings that investigators would be provided.

20 ADV ACKERMANN: You know, let us start with all these cases. Were an investigator here. I do not know whether an investigator was appointed for the PEBCO case. I do not know whether an investigator was appointed for the Cradock case, here it says Fanie Els was appointed. I do not know whether an investigator was appointed for Hansie Botha and others, I do not know whether an investigator was appointed for Coetzee, I do not know whether an investigator was appointed for the Kokstad Sport matter, I do not know whether ... all these cases, I do not know. If you tell me they were appointed... (intervenes)

ADV SONI: Did you make enquiries?

ADV ACKERMANN: I must say, I did not know about it.

ADV SONI: You did not know about what?

ADV ACKERMANN: That investigators were appointed.

ADV SONI: SJoe. Mr Ackermann, I have got to say something to you. The thrust of your complaint, as I understood it, from all the affidavits you have written regarding these matters, was that the reason that these prosecutions did not go ahead was because there were no investigators that were appointed.

10                   And now you say today, that you did not know if investigators had been appointed.

ADV ACKERMANN: I say that because I am of the view that they were not appointed.

ADV SONI: Did you make enquiries?

COMMISSIONER KGOMO: I thought you asked Mr Soni. But...{intervenes} you have not yet been answered to that.

ADV SONI: Mr Ackermann, did you make enquiries?

ADV ACKERMANN: Of course. There would have been enquiries. You can ask in fact, Macadam will be able to tell us or whoever. They  
20 offered that the duty to investigate. Did they appoint a .. If the evidence is from the police, that yes, for each of these cases, we appointed an investigator.

COMMISSIONER KGOMO: Mr Ackermann... (intervenes)

ADV ACKERMANN: Then that is the end of the matter. But these cases were not investigated.

COMMISSIONER KGOMO: Mr Ackermann, just listen. Did you make enquiries? No, I did not make enquiries. Or, I made enquiries. And then, wait for the follow-up question.

ADV ACKERMANN: I cannot recall. That is the best answer to everything now.

ADV SONI: Mr Ackermann, may I ask you one thing? And just tell me whether you agree with the general proposition I am making. I know you agreed when I said that it seems as at 2015 that the record of prosecutions was dismal. You agreed with that proposition. Is that  
10 correct?

ADV ACKERMANN: I would say, yes, it is dismal, but I am not the cause of it. I was keen and all the documents were reflected.

ADV SONI: Yes. And, Mr Ackermann, it is not for me to say who was responsible. It is for the Commissioners to make that ... (intervenes).

ADV ACKERMANN: You already made a statement to that effect. I said you already made a statement to that effect that I was not very keen to investigate.

ADV SONI: Mr Ackermann, I was responding, but be that as it may, I can make a statement, but that is not binding on anybody, certainly  
20 not on the Commissioners. The question I want to ask you is this. These matters have not been finalised from 2003 when the investigation, when the prosecutions ought to have started in earnest. Am I correct?

ADV ACKERMANN: From 2017, yes.

ADV SONI: 2017, you say?

ADV ACKERMANN: Yeah.

ADV SONI: Okay, that is the period that you may have been involved. Anyway... (intervenes)

ADV ACKERMANN: I was not involved in it. I retired in 2013.

ADV SONI: Can I ask you this? When one looks at the picture as a whole. The fact that there is this dismal result in regard to investigations and prosecutions, appear to be based on two possible broad reasons. One is what Mr Wagenaar has told you on so many occasions. That, look, man, we are all wasting our time in this. There  
10 is going to be no purpose served by prosecuting these matters because at the end of the day, the Generals and the leadership of the ANC has made a decision that these matters will not be prosecuted. That, as I understand it, is more or less what Wagenaar told you as a general proposition. Would I be correct?

ADV ACKERMANN: Yes, it appears to me he was right, that all the politicians were involved and there will not be any prosecutions. And they were drafting... carry on.

ADV SONI: I am asking a different question. I say this is what Mr Wagenaar told you.

20 ADV ACKERMANN: Yes., and with hindsight it appears to me he was right.

ADV SONI: The other issue perhaps relates to this. You will remember that I started with the letter by Commissioner De Beer saying that we will not investigate our own. And I said to you that reflected a reluctance to investigate, by the police to investigate their

own. Now, that is the second possibility that exists. And I am just giving one part of that second possibility, namely a reluctance on the part of the police.

In addition to that, in his book relating to the TRC, well, in part of his book relating to the TRC matters, Reverend Chikane says that there appeared to be no appetite to pursue the TRC matters on the basis that the past is the past and we must move on. That is part of what is reflected in Reverend Chikane's book. Now, that is another possibility. Would you accept that?

10 ADV ACKERMANN: There are many possibilities. I accept those two.

ADV SONI: And then the third one is that it is this tussle about turf between or among the following. Firstly, the police and the DSO on the one hand, where the police thought that the DSO were hogging the headlines and doing all the cases that appeared in the media and they were, in a sense, asked to do the more, the lesser well-known cases. And then between the NPA and the investigating arms that have been created, namely the DSO and the police, and it is that inability for them to look to the greater good of the victims of apartheid  
20 and the abuses that were suffered that in fact is the cause of the delay. Would you accept that?

ADV ACKERMANN: I accept that. But Chair, can I just ask something. We can sit until nine o'clock tonight, but we must finish it today, the cross-examination. Because it is the last time I will see you.

CHAIRPERSON: On that score, Mr Soni, how long do you still have to go with your cross-examination?

ADV SONI: I do not intend to be much longer.

CHAIRPERSON: We have re-examination to conduct before we can excuse the Advocate Ackermann.

ADV SONI: Yes, no, no, I understand, Chairperson.

COMMISSIONER KGOMO: Yeah, that was the third scenario, third possibility. Is there a fourth?

10 ADV SONI: Can I take a minute? Commissioner Kgomo, I do not have a third possibility. There may be, but a fourth, but my analysis must be limited. I am just one of the persons that are involved. It is a matter that spanned for a long time. But these are the three possibilities. Now, Mr Ackermann, may I conclude my cross-examination... (intervenes)

COMMISSIONER GABRIEL: Mr Soni, can you come closer to your mic?

20 ADV SONI: Oh, I am sorry, Commissioner. May I conclude my cross-examination, Mr Ackermann, with this? At the end of the day, the Commission, and of course in part the Evidence Leaders trying to lead evidence in that respect, will have to determine who was responsible for any... well, firstly, whether there were attempts to stop the investigations and the prosecutions of persons who should have been prosecuted in terms of the TRC mandate. And from what we have through your evidence and the evidence of people associated with the NPA and the police, it would appear that we will not be able

to identify at this point who in particular was responsible. But we can say, institutionally, it was the NPA and the police. Anyway, that is what we submit are the institutional culprits, if I can use that word.

CHAIRPERSON: Do you have any response, Advocate Ackermann?

ADV ACKERMANN: None.

ADV SONI: Chair, I have no further questions, madam.

CHAIRPERSON: Thank you. Mr Varney?

RE-EXAMINATION BY ADV VARNEY: Thank you, Chair. Just a few questions on re-examination. Mr Ackermann, if we can just start with  
10 the questions my learned friend, the Evidence Leaders put in relation to the De Beer letter, that is the 26 September 2003 letter. From Commissioner De Beer to yourself. Do you have a copy of it?

ADV ACKERMANN: Yes, I have it in front of me.

ADV VARNEY: It was just put to you that in that letter, De Beer said or intimated that we will not investigate our own, we will not investigate them, as in police investigating police. Is that anywhere in this letter?

ADV ACKERMANN: I cannot recall where it is.

ADV VARNEY: Okay. Well, I can tell you that it is... (intervenes)

20 ADV ACKERMANN: It is not in there if I think about it. I just read it now, I cannot see it.

ADV VARNEY: Yes. But what is there is the sentiment that a number of cases to be investigated are those of ex-policemen, therefore it is understandable that you first endeavour to have these cases investigated by the DSO. Can I ask the investigators with the

DSO, the detectives that they had, were they either former SAPS or seconded SAPS investigators?

ADV ACKERMANN: They were... I do not know whether they were seconded, but I know most of them, they were all policemen.

ADV VARNEY: Yes. So even in relation to the DSO, that was a concern. You would still have policemen investigating policemen?

ADV ACKERMANN: That is correct.

ADV VARNEY: And in that same paragraph, just to tie up some loose ends, it is stated that the prosecution of these cases were referred to  
10 the NDPP by the President, are you aware of any Presidential proclamation in which the Presidents directed that the TRC cases had to be investigated by the EDSO?

ADV ACKERMANN: No, I do not.

ADV VARNEY: Now, the only thing I can think of is that in the President's speech in 2003, he made mention of the fact that the NPA would proceed with these cases in the normal course or something to that effect. Do you recall that?

ADV ACKERMANN: That is correct.

ADV VARNEY: And it is understandable that prosecutions in South  
20 Africa are handled by the NPA, but could you read into that that the NPA would then also handle the investigations.

ADV ACKERMANN: Because the police handled all my investigations, I am now not talking about TRC investigations. Only TRC cases were excluded.

ADV VARNEY: Yes, and in the absence of such a proclamation,

under the NPA, or rather under the SAPS legal mandate, they had the authority to investigate crimes, especially serious crimes like kidnapping and murder.

ADV ACKERMANN: Correct.

ADV VARNEY: At any later stage, did the SAPS ever put up this issue of police investigating police as a reason why they should not investigate?

ADV ACKERMANN: I do not know of any, I have heard that for the first time in his letter. Police investigate, when a policeman commits  
10 a crime, it is policemen that investigate them. They have just at the Mdlanga Commission, it is the duty of the police to investigate.

ADV VARNEY: All right. Let us move on. It was put to you that at the end of 2003, the NDPP at that time, Bulelani Ngcuka, was asked to make a declaration in respect of four cases, and that was issued on 24 February 2004. And the four cases were PEBCO 3, Brian Ngulunga, the Motherwell 4 case, and then the Frank Chikane matter. And then shortly thereafter, two further matters were added. The St James Church attack, as well as the attack on the Heidelberg Tavern. And you have testified that as far as you are aware, investigation  
20 officers were not supplied in those matters.

And we have just taken a quick look at the Macadam affidavit. And this is, in a few places, we're looking at bundle 8, page 280, at paragraph 23. And if you look at paragraph 22, he makes reference to the letter written to Ledwaba by Ackermann, dated 11 November 2003. I am not going to go into that detail.

Next paragraph, Mr Ackermann says:

The DSL, however, did not appoint investigators as requested, and consequently, none of the TRC matters requiring investigation could be taken further.”

Is that your recollection?

ADV ACKERMANN: That is correct.

ADV VARNEY: Let us look at the individual cases. And let us try to do it as quickly as possible. The PEBCO 3 matter, as I understand  
10 your evidence, I think you might have mentioned this in your evidence-in-chief, that had been investigated previously, and indeed, the record shows that the PEBCO 3 accused, or at least some of them, appeared in court and indicted on 11 February 2004, which is about just under two weeks before the NDPP issued his declaration.

So in that case, it appeared that those investigations had been largely complete, given that the matter had already been enrolled before the declaration was issued.

CHAIRPERSON: Advocate Ackermann?

ADV ACKERMANN: Correct.

20 ADV VARNEY: The Chikane matter, as I understand your evidence, had already been well developed and investigated. You did mention that you yourself had to conduct certain enquiries, even having to go to the US to collect a toxicology report. But that the inquiries were largely done by 2003. Is that recollection accurate?

ADV ACKERMANN: Correct.

ADV VARNEY: Let us turn to the other matters. The Motherwell 4, in that matter, I understand that convictions had already been obtained in the early 1990s, but that there might have been a further angle or lead to pursue on that matter in relation to Krappies Engelbrecht. Is that your recollection?

ADV ACKERMANN: I do not think I specifically dealt with the matter to say that, no, the investigating officer who was appointed. I am not sure.

ADV VARNEY: All right. Let us move on. The Brian Ngulunga case,  
10 do you have any recollection as to what happened in that matter?

ADV ACKERMANN: It was not investigated, it was investigated, when the Riviera Unit was still in place. I know there was a docket there. I do not know what then happened to the docket, who investigated it further. But that is now quite early, that must have been in the late 90s.

ADV VARNEY: Right. And then finally, the St James Church and Heidelberg Tavern attacks. Were those developed any further?

ADV ACKERMANN: I think Mhaga dealt with that matter. I think Mhaga and... I do not know who the investigating officers who were  
20 appointed. I do not know, Mhaga and Pretorius, I do not know whether a investigating officers were appointed. They both will be able to give you an accurate... (intervenes).

ADV VARNEY: Well, Advocate Mhaga has already testified and his evidence is that he did what he could in a handful of cases. That is already on the record. But that by, but between 2007 and 2009,

because he could not get any investigative support and the cases were not being taken forward, he actually asked to be transferred to other matters where he could pick up court experience.

ADV ACKERMANN: He mentioned quite a few matters that he investigated in the Eastern Cape. I know, I have just read it. I have just read his affidavit. Every time, you know of that.

ADV VARNEY: Yes, he has testified. It is on record. It has been referred to. We do not have to traverse that again.

Then let us turn to your 2015 statement. And it was put to  
10 you that certain matters did go ahead and you outlined them in  
paragraph 16. And because there is some other matters, let us just  
deal with them. Well, there were four matters. The Eugene  
Terre Blanche case, that is in paragraph 16.1 of your 2015 statement.  
The Blani matter, paragraph 16.2. Then the PEBCO 3 matter. And  
then finally, the Chikane matter.

As I understand your evidence-in-chief, those particular  
matters could go ahead because they had been previously  
investigated. In fact, in paragraph 16.2, I think you mentioned that  
the Blani matter had already been fully investigated.

20 ADV ACKERMANN: That is correct.

ADV VARNEY: And we have discussed the PEBCO 3 matter already.  
It was put to you by my learned friend, Mr Soni, that although you had  
referred to the Chikane matter in paragraph 17, that was only in  
relation to the arrest. You had not referred to the fact that the case  
did get finalised in court. If you have the statement in front of you, I

want to draw your attention firstly to paragraph 25. And if you look at the middle of paragraph 25, and just to save time, I will read that sentence:

“However, with the exception of the Chikane matter during the course of 2006 and 2007, the PCLU was unable to pursue any of the TRC cases for various reasons.”

You make reference to investigative capacity. And then let us turn to page 29, where you set out the detail. I am sorry,  
10 paragraph 29:

“During 2007, the PCLU eventually returned to the Chikane attempted murder matter.”

And then you make reference to the charges and the plea and sentence agreement. I am not going to waste time going through that. The Commission is familiar with it. So it is correct that you did deal with the Chikane matter in detail in your 2015 statement, including the fact that it had been finalised in 2007?

ADV ACKERMANN: Yes, for everybody to see.

ADV VARNEY: Now, if we can turn to the proclamations that you  
20 were referred to by Mr Soni. So this is PCJ17, where Commissioner Jacobs writes to Assistant Commissioner De Beer. That is an undated document. He also referred you to PCJ18. That document is dated December 2006. And that document, PCJ, we are just getting PCJ18. Is it in here? All right, in any event, my recollection is that PCJ18 is the communication, I believe, from Commissioner

Jacobs to Provincial Commissioners, requesting them to make officers available. And in fact, specific officers were named for the provinces.

Now, it was put to you that these two communications was an offer to the PCLU. Is that strictly speaking correct? What offer was being made to the PCLU since these communications were not addressed to the PCLU? I do not believe you even copied on them?

ADV ACKERMANN: I have not seen these documents. But I know that at some stage, he did mention that people were approached to  
10 assist. But these documents, you get the copies of them with the names.

ADV VARNEY: Yes, and just for the completeness of the record, if we can go to the ITT minutes of 4 December 2006. That is at page 55. It is annexed PCJ10. You were present at that meeting and so was Commissioner Jacobs. I just want to refer you to paragraph 4.5:

“Commissioner Jacobs informed members that he has sent a letter to Commissioner De Beer. And the list of all investigators will be ready soon.”

So Commissioner Jacobs informs that he has sent a letter to  
20 Commissioner De Beer. And then if we can turn to the minutes of the task team, 29 January 2007. That is at page 56 of the Jacobs bundle. It is annexed PCJ11. And I am just going to read you the second last paragraph:

Commissioner Jacobs informed the meeting that he is waiting for feedback from Provincial

Commissioners, on the appointment of investigators. Some had responded and provided him with a list of the investigators. He also requested a list of SAPS dockets in possession of the PCLU.”

Now, it was your evidence that you were not aware whether any investigators had been appointed. And actually, we can find no evidence anywhere in the record that these investigators were appointed. And we can refer to paragraph 62 of Commissioner  
10 Jacobs' affidavit before this Commission, on page 16 of his affidavit, where he refers to preparing a letter for Commissioner De Beer's signature on 6 December 2006 and to address to the Provincial Commissioners in the provinces. And then he says:

“In this regard, it was reported to the ITT on 29 January 2007 that feedback was being awaited from the Provincial Commissioners on the appointment of investigators.”

So as far as we can tell, the last mention of these investigators was towards the end of January 2007 when  
20 Commissioner Jacobs reports that he is awaiting feedback. Now, we have evidence from Macadam saying that he was still asking for investigators between 2007 and 8 through to 2010. We have evidence from Advocate Mhaga saying that although he did what he could on his own and being innovative, he did not have any investigative support. So it does seem that there is not any particular

evidence, and perhaps if there is, I am sure my colleagues will present it. But it does seem that, at least as far as the record is concerned, it supports your assertion that these investigators were not appointed or certainly did not commence work.

ADV ACKERMANN: Yes, I agree.

ADV VARNEY: And if we can just go back to the proclamations that were issued in early 2004. And again, it is your evidence that as far as you are aware, those investigators were either not appointed or did not commence work. In that same year, the moratorium was imposed  
10 towards the end of that year, at least officially. I do not want to traverse that evidence again, but you will recall that on 11 November 2004, when you attempted to effect arrests in the Chikane matter, and the evidence from yourself and Advocate Ramaiti is that the Minister then intervened and the cases were then suspended pending the guidelines.

That probably explains, at least from November 2004, why there was no attempt to follow up, because now there was an instruction that the NDPP was under to suspend work on these matters post-November 2004, pending these guidelines. Would that  
20 be correct?

ADV ACKERMANN: That is correct.

ADV VARNEY: No further questions, Chairperson.

CHAIRPERSON: Thank you, Mr Varney. Advocate Ackermann, we thank you very much for having agreed to come to give evidence before this Commission, given your health condition. That is greatly

appreciated. You are now finally excused as a witness. Thank you.

These proceedings, these proceedings... Oh, Mr Semenya?

ADV SEMENYA: No, I was just going to make a point that Monday is a DS-non, it is a holiday.

CHAIRPERSON: Yes.

ADV SEMENYA: But in lieu of your directions.

CHAIRPERSON: Yes. These proceedings are adjourned until the 30th of May. 30th of April.

COMMISSIONER KGOMO: I almost got a heart attack.

10 CHAIRPERSON: These proceedings are adjourned until 30 April 2026 at 10:00.

INQUIRY ADJOURNS UNTIL 30 APRIL 2026

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## CERTIFICATE OF VERACITY

We, the undersigned, hereby certify that **as far as it is audible**, the foregoing is a true and correct transcript of the digitally recorded proceedings in the matter of:

### JUDICIAL COMMISSION OF INQUIRY INTO TRC

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